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The Immense Rumor

Peter Goodrich*

The immense rumor is surprisingly academic.¹ It is a quotation of a quotation of a fragment that may or may not have been authored, in those or similar words, by Aristotle. The rumor is immense because – and this is perhaps its academic attraction – it is obscure. In one translation, it states, “O my friends, there is no friend,” and suggests a certain absence or impossibility.² Like many fragments, it appears paradoxical or enigmatic, but I will argue that in fact it is not. Its origins can be traced to a rumor drawn from law. It describes the long-term of a practice, and it enacts a prohibition. Most significantly, the rumor marks a historical incapacity or debility, the absence of a public language of amity, and thus a practice of the unspoken. It is with that practice that I will begin.³

The most recent exposition of the immense rumor comes in Derrida’s monumental study of the politics of friendship, a work which traces the

* Marco da Cola, the Italian protagonist of Ian Pear’s *An Instance of the Fingerpost* (1998), remarks that the English are unique for their capacity to lose their friends. Italians treat the friend, once fashioned, as family and hence as an inseparable incidence of existence, whereas the English are more realistic and admit that just as great loves are born and broken, so too are friendships made and sometimes of necessity dissolved. I say this in part as a form of cultural self-deprecation and in part so as to honor the choices of those who are still my correspondents, my friends, my colleagues, and one who is my wife. Thanks thus to Lauren Berlant, Marinos Diamantides, Tatiana Flessas, Adam Gearey, Lorna Hutson, Desmond Manderson, James Martel, Nathan Moore, Paul Piccone, Uriel Proccacia, Anton Schutz, Adam Thurschwell, Mariana Valverde and, as Renaissance rhetoric put it, “the queen of friends,” Linda Mills. Thanks also to Jamie Taylor and to the participants at the Graduate Seminar in Literary Theory at the University of Pennsylvania, the participants in the 2003 Law, Culture, Humanities Conference held at Cardozo School of Law, and New York University, where versions of this paper were delivered. Thanks finally to Matthew Thurlow for spirited editorial suggestions.

1. The reference to “the immense rumour,” which expression occurs, as far as I am aware, only once, is from JACQUES DERRIDA, *POLITICS OF FRIENDSHIP* 27 (George Collins trans. 1997). I did not note the reference in my first reading of the book and so owe my attention being drawn to it to JAMES MARTEL, *LOVE IS A SWEET CHAIN: DESIRE, AUTONOMY, AND FRIENDSHIP IN LIBERAL POLITICAL THEORY* 5 (2001).

2. On the sources of this fragment, see Miriam Leonard, *The Politique de l’amitié: Derrida’s Greeks and a National Politics of Classical Scholarship*, 46 *PROCEEDINGS OF THE CAMBRIDGE PHILOLOGICAL SOCIETY* 47 (2000).

3. I take a cue here from Catherine Pickstock, *The Problem of Reported Speech: Friendship and Philosophy in Plato’s Lysis and Symposium*, 123 *TELOS* 35, 38 (2002) (“It has become rare for speculation about friendship to turn on particular friendships and encounters with particular people.”).

history of the immense rumor from the classics to the contemporary in the texts of the Western political tradition. His theory is that the immense rumor dictates a law of the same: plural friends or political comrades take priority over an individual friend, and thus, "oh my friends, there is no friend."⁴ One implication of this theory is that there is no singular or individual and nominate friend; there is a void at the heart of friendship because the political prerequisites of amity dictate an endless postponement of the time of the friend: living friendship is consigned to an outside or elsewhere, a heterotopia that is never present.⁵ The initial proof of this premise has to be specific and a question of practice. For this reason I will turn initially to a precursor of Derrida's treatise on amity. It comes in a more or less unguarded conversation about friendship that took place in honor of the death of Louis Althusser, Derrida's long-term colleague at the Collège de France and, if the immense rumor is true, his very distant friend.

Some five years before he published *Politics of Friendship*, Derrida was interviewed on the topic by Michael Sprinker. The discussion was almost entirely devoted to Derrida's relation to Marxism, and to its principal contemporary authors and texts. Although the seminar from which the book will later be drawn is alluded to briefly, friendship already seems difficult to speak of, a chimera or ghost rather than a topic or object of knowledge. In an interview that runs to roughly fifty pages, Derrida uses the word friendship twice, and the words friends and friendly thrice each. Michael Sprinker, for his part, asks one question that mentions friendship, and at another juncture remarks of a book that was sent to him by Etienne Balibar: "[I] loaned [it] to a friend and therefore have not had the chance to look at [it]."⁶

As for Jacques,⁷ and even if his friends have not been taking things away from him, friendship is hardly present. Asked about his early years at the Ecole Normale and specifically his relationship with Louis Althusser he ventures a species of plaint: "As I said before, we spoke very little about philosophy together: only in brief, elliptic, ironic, sometimes friendly, sometimes less friendly exchanges. Always against a background

4. DERRIDA, *POLITICS OF FRIENDSHIP*, *supra* note 1, at 1. Compare FRIEDRICH NIETZSCHE, *THUS SPAKE ZARATHUSTRA* 140 (1911 ed.): "Oh my enemies, there is no enemy."

5. I expatiate on this interpretation of the aphorism in Peter Goodrich, *Laws of Friendship*, 15 *Law and Literature* 23 (2003).

6. JACQUES DERRIDA, *NEGOTIATIONS* 172 (trans. and ed. Elizabeth Rottenberg, 2001). The interview, which took place in 1989 at Irvine, was originally published in *THE ALTHUSSERIAN LEGACY* (Anna Kaplan & Michael Sprinker, eds., 1993).

7. The editors have of course suggested that the use of the forename is much too personal – "too comfortable" they say, where other colleagues say that it is "too insider" – but this just reflects and inscribes the denial of friendship. I happen to know Derrida, to correspond and converse with him. He is not in any way a close friend, but I know him and what I write is informed by that, by his presence and person, by his conversation, by his being Jacques.

of allusions and probably also of enormous misunderstandings.”⁸ Somewhat later, and forgive the detail but this is all that he said

I wanted to ask questions. At every step, I would have liked to have had a long discussion with him and his friends and asked them to respond to questions I felt necessary. The fact is – strange as it might seem – this discussion never took place. And yet we lived in the same ‘house,’ where we were colleagues for twenty years and his students and friends were often, in another context, mine. Everything took place underground, in the said of the unsaid.⁹

On one reading, these anecdotal remarks observe a highly conventional structure. Friendship is mentioned only fleetingly because it belongs outside of public life; it is a matter of the elliptical and ironic and this locates it in “a background of allusions,” in “another context.” The other place or heterotopia of amity is rhetorically charged. It proffers a species of apostrophe to depict amity as an absent mood – it is at best an institutional memory or a hope – and in either case it is designated “strange,” subterranean and “unsaid.”¹⁰ In part because he seems to observe the classical prohibition upon explicit or nominate analysis of the role of friendship in institutional life, and in part because of the simple sparseness of his allusions, Derrida paradoxically places amity itself in the realm of the unsaid. Friendship becomes a matter for excavation, decipherment, and the circulation of cryptograms and codes.

On another reading, however, these remarks about amity, about the friend who shares my property or takes my book away, suggest something more complex and political. The remarkably rapid appearances and disappearances of the figure of friendship suggest ambivalence and imply a species of governing absence or law of amity. There is a rumor, an overvaluation of friendship that romanticizes a friend who did exist and may do so again in the future, the off hours or the not yet. Derrida’s fleeting remarks on the unspoken character of friendship take place in the course of a discussion of his relationship, his intimacies, with Althusser. He relays highly personal conversations, memories such as: “And yet, how many times did he say to me during the last years in hospital, ‘Listen, you’ve got to talk to me about Heidegger. You’ve got to teach me Heidegger.’” While this plea might seem more professional than personal, it is the only form that intimacy took.

The request made from bed by one philosopher to another that he teach the invalid Heidegger – about whom, incidentally, Althusser had written in

8. DERRIDA, *NEGOTIATIONS*, *supra* note 6, at 154.

9. *Id.* at 158.

10. GEORGE PUTTENHAM, *THE ARTE OF ENGLISH POESIE* 245-46 (Murray, 1869 ed.) (1589), defines apostrophe as the “turne tale,” an allusion or exclamation that appears during the course of a discourse about something else, and continues that it “breedeth . . . a certaine recreation to the hearers minds, as this used by a lover to his unkind mistress.”

highly negative terms, yet apparently had not read – is both intimate and shocking. So too, Derrida offers certain other glimpses of the affective life of political *prises de positions*. He comments upon the enormous misunderstandings and also on his feelings of intimidation, his apprehension of “an *intellectual*, if not *personal terrorism*.” He laments his frustration at being excluded, at the strangeness of questions being foreclosed, at the stupefying practice of avoidance and at the silence that dominated institutional relationships.¹¹ It is true that he also says, and without any apparent irony: “I always had very good personal relations with Althusser, Balibar and others,” but the simple fact of these anecdotes, the disclosures of names and moods in the long term of professional space, begins the work of unraveling a politics of friendship that silently and invisibly structures, indeed institutes, professional life.

Despite the seemingly idiosyncratic character of Derrida’s depiction of his institutional roots, I will argue that his charged relationships at the Ecole Normale were, appropriately enough, normal and are repeated in most professional spaces.¹² By this, I mean initially that the dynamics of amity and enmity – and the trajectories of affinity and hostility, as also of followers and flatterers – are key sites of institutional politics and form the unspoken stuff of what Lauren Berlant coins “the intimate public sphere.”¹³ The paradox is that the said of the unsaid requires excavation, and even Derrida, who has done more than anyone else to revive the topic of friendship, has shied away from explicitly addressing its politics within the public sphere of the living. He still wants to keep friendship out of the market, out of the law, out of professional life, innominate and confined either to the “other context” of the private sphere, or to the indefinite postponement of the not yet.

I will show in what follows that there is a historical reason for this recalcitrance, this frustration or shyness on Derrida’s part. The discourse of friendship has its roots in law and specifically in the discourse of lawyers upon the constitution of the polity, the protocol or manners of living civilly – which is to say, according to the rules of citizenship and the norms of law. From Cicero to the Renaissance to the moderns, it was

11. DERRIDA, *NEGOTIATIONS*, *supra* note 6, at 152.

12. Derrida, with symptomatic optimism, tries to treat his recollections as being abnormal: “An intellectual sociology of this dimension of French intellectual or academic life and notably of that normalian milieu, in which the practice of avoidance is stupefying, remains to be undertaken. I imagine this appears incredible to a non-French person, especially an American.” DERRIDA, *NEGOTIATIONS*, *supra* note 6, at 158.

13. Lauren Berlant, *Collegiality, Crisis, and Cultural Studies*, 117 ADE BULLETIN 4, 5-6 (1997) (analyzing the “critical, pedagogical, and personal differences that get especially animated when we are managing departmental curricula, hiring, promotion, and tenure; teaching; and making intellectual public spheres.”). Berlant goes on to elaborate on the value and denial of the “personal archives” that more than anything else are our evidence of the workings of the intimate public sphere. *Id.*; see also Lauren Berlant, *Intimacy: A Special Issue*, 24 CRITICAL INQUIRY 281 (1998) (on the worlds that intimacy constructs). For an amusing counterpoint, see LAURA KIPNIS, *AGAINST LOVE* (2003).

lawyers who authored the discourse on amity and instituted what was explicitly a *lex amicitia*, or law of friendship. It was lawyers who formulated and promulgated norms of secrecy and of silence, as also of loyalty and obedience upon the citizen as neighbor and friend. The humanist reception of the laws of amity was a juristic phenomenon and it relayed a legal code that effectively imposed a series of prohibitions upon the role and the representation of friendship in the public sphere. The paradox of Derrida's work on friendship lies in the legalism of his notion of the friend. The juristic roots or legal inheritance of the discourse on amity has yet to be accounted, and the price of that failure is repetition. In brief, the law represses or tacitly proscribes the role of friendship in the public sphere.

The laws of friendship are the incidents of its exclusion from the public sphere – the judge must recuse him or herself from judging friends, the attorney cannot properly represent or act for a cause in which he or she has an interest or amity, and affect indeed is supposed to play no part in the concatenations or elaborations of law. The order of law is predicated upon a refusal to deal with friendship and so it institutes a non-recognition of the friend, the absence that structures the maxim, "Oh my friends, there is no friend." In Derrida's own felicitous formulation, friendship is reduced to amorphousness: "[O]ne doesn't cite or name, everyone distinguishes himself and everything forms a sort of archipelago of discourse without earthly communication, without visible passageway."¹⁴

Tracing the legal history of friendship also has the virtue of evidencing a pattern and trajectory to the inherited laws. The classical law instituted friendship in the form of absence or lack. There could be no public acknowledgement of the friend, there was no language of institutional amity, and so we are heirs left with nothing more than residues, with a rumor, a specter, a memory, or hope. Ironically, it is this lack that generates the desire for the friend and the attempt to address the politics of amity. Towards the end of the Renaissance there was a shift in the manner in which the prohibition of the friend was portrayed. Particularly, in the tradition of didactic emblems, the law was restated at the same time as the visual representation of friends was eroticized. There was an explicit ambivalence. The restatement of the law was accompanied by an image of the visceral desire of friends for each other. Derrida, I will argue, is an inheritor of that ambivalence towards the law and the friend. He expresses his ambivalence by wanting to talk to friends but constantly reverting to an analysis that postpones that encounter with living friendship, with practice, in favor of a reassertion or recycling of the classical law. His ambivalence, however, is also productive. It offers an insight into the ineloquence and limitation of the law of friendship as we have inherited it,

14. DERRIDA, *NEGOTIATIONS*, *supra* note 6, at 158.

and in doing so offers the possibility of a critique of the immense rumor and the antique law or prohibition that it perpetuates.

PHILOI, AMICI, AND THE HISTORICAL AESTHETIC OF FRIENDSHIP

When Derrida first wrote about friendship and desire in *The Postcard*, much of the first and longest segment of the work was in the form of postcards, with letters and other *billets doux* written to lovers and friends.¹⁵ Thus, he reports from railway stations, airports, boating trips, and other sites of transit on events and people visited or encountered: “8 July 1979 Serge Doubrovsky had wanted to get a certain effect from some news that he believed he could bring to the knowledge of his audience: I was supposed to be in analysis! A swollen head, don’t you think?”¹⁶ Derrida, of course, had always been vehement that he had never been in analysis, and that maybe in part explains the extraordinary indeterminacy of the addressee of his postcards: “9 May 1979 If you knew how I love you, my love, you would do it, you would not resist anymore. Who are you, my love? You are so numerous, so divided, all compartmented, even when you are there, entirely present and I speak to you. Your sinister ‘determination’ has cut us in two.”

Amity, which shares its root with *amor*, made occasional or episodic appearances in the text, but the serious missives that the book relayed concerned Plato’s letters to Socrates, Lacan’s notes to Freud, Heidegger’s romances, a recollection or two of the work of Nancy, and Derrida’s

15. JACQUES DERRIDA, *THE POSTCARD: FROM SOCRATES TO FREUD AND BEYOND* (1987). The first sentence defines the project: “You might read these *envois* as the preface to a book that I have not written.” This, of course, is the perfect mode of address for friendship – a conditional sentence directed towards an absence – in its massive rumored form. The postcards then occupy the rest of the book. As regards the addressee of the postcards, that is inevitably equivocal. For example:

“3 June 1977

and when I call you my love, my love, is it you I am calling or my love?” And again:

“5 June 1977

I would like to write you simply, so simply, so simply. Without anything ever catching the eye, excepting yours alone.” And while there are some nominations, they are not of the addressee. Thus, for example:

“13 October 1977

Don’t get too wrapped up in Esther. I don’t believe too much in it, perhaps it is only a fine psychoanalytic solution.” And again:

“8 July 1979

and I thought a lot about Bettina. Oh, she is not you but the situation is terrifying and it must be spoken of without gynemagogy.” And he finishes:

“30 August 1979

Tomorrow I will write you again, in our foreign language. I won’t retain a word of it and in September, without my ever having seen you again, you will burn

You will burn it, you, it has to be you.”

16. *Id.* at 202-03. Derrida goes on to observe: “This friend, whom I have no reason to doubt, tells me that the context was more or less the following: do you know J.D. is in analysis, as I myself (S.D.) have been, this is why I have written what I have written, let’s see what’s going to happen with him!” *Id.*

letters back. When in *Politics of Friendship* the now somewhat older Derrida returned to write on friendship more formally, he did so quite explicitly in the classically humanist manner of entering into a correspondence with Aristotle, Montaigne, Nietzsche, and Schmitt – correspondents who share the worthy characteristics of all being men and all being dead.¹⁷ While in *The Postcard* Derrida on occasion did elliptically address an unnamed yet living friend, that discourse was rapidly absorbed into the more classical circulation of letters – texts – across the ages, from the dead to the living and back and on. In the later work, Derrida is quite explicit. At the very end of a book devoted to friendship, after 301 pages of discussion, in the context of an affirmation that it is death alone that allows the “declaration” of friendship, there is a fleeting and cryptic reference, in the future anterior tense, to certain unnamed friends: “Without seeking to conceal it, it will have been understood that I wish to speak here of those men and women to whom a bond of friendship unites me – that is, I also want to speak *to them*.”¹⁸

In the text, however, everything is distinguished. No friends are named or “spoken to” directly. By implication, their time will come when their time is up: they ‘will have been’ friends only once death has allowed the declaration of “all-out friendship” at their funeral and as part of the work of mourning.¹⁹ To unpack this prohibition, this law ordaining that living friendship remain part of the unsaid, requires attention first to the question of genre. The figure of the friend as it circulates within contemporary discourses on friendship has its roots in the Renaissance reception of a Graeco-Roman tradition. It belongs to a humanistic concept of the polity in which classical texts circulate as letters addressed to hypothetical future friends. As Peter Sloterdijk reports it, these letters manage to exercise a magical power to transform love of the immediate and proximate into a timeless *amour lointain*—a love for the distant, the unknown, and the yet to come.²⁰ In brief, the figure of the friend is that of recollection, mourning, and passing on; it is the figure of a duty, of an obligation or contract between the dead, the living, and the unborn. It is a figure of law, of humanist juristic precepts that leave the practice of friendship in the heterotopia of private desires and in the elsewhere of the unsaid. Erasmus

17. Thus, in *The Postcard*: “The master-thinkers are also masters of the post. Knowing well how to play with the *poste restante*. Knowing how not to be there and how to be strong for not being there right away. Knowing how not to deliver on command, how to wait and to make wait, for as long as what there is that is strongest within one demands – and to the point of dying without mastering anything of the final destination. The post is always *en reste*, and always *restance*.” DERRIDA, *THE POSTCARD*, *supra* note 15, at 191.

18. DERRIDA, *POLITICS OF FRIENDSHIP*, *supra* note 1, at 302.

19. JACQUES DERRIDA, *THE WORK OF MOURNING* 214-15 (2001) (encomium for Jean-Francois Lyotard which introduces the concept of “all out friendship”). See also DERRIDA, *MEMORIES FOR PAUL L DE MAN* (1986), a classically mournful retrospective.

20. PETER SLOTERDIJK, *REGLES POUR LE PARC HUMAIN. UNE LETTRE EN REPONSE À LA LETTRE SUR L’HUMANISME DE HEIDEGGER* 9 (2000).

offers the emblematic adage: “[S]hewe your selfe neyther friende nor foe” [in the public sphere].²¹ To understand this injunction requires a reconstruction of the juristic bases of humanism and, most specifically, a detailed philological accounting of the legal sources of the idiom and of images of amity and enmity within humanist texts.

Beginning with the surface, it is worth pointing out that the humanist tradition of discourses upon friendship had its roots in law. It was a Ciceronian tradition and took its main inspiration from *De amicitia*,²² a work written by a lawyer in the form of a dialogue with Quintus Mucius Scaevola, one of Rome’s most famous lawyers and Cicero’s tutor in his studies of law. The Renaissance interpreters of this text were overwhelmingly lawyers. Andreas Alciatus, author of the hugely popular didactic book of emblems, *Emblemata*, which contains four entries on *amicitia* (and eight on *hostilitas*) was one of the most important of the humanist reformers of the post-glossatorial Roman legal tradition.²³ Sir Thomas Elyot, author of *The Boke Named the Governour*, was the son of a judge and himself a lawyer.²⁴ Francis Bacon, author of hugely influential and much translated essays on friendship, followers, and friends, was a lawyer and latterly Lord Chancellor of England.²⁵ Michel de Montaigne, whose essay on friendship is still the standard for addressing the topic, trained first as a lawyer. To this we can add William Fulbeck, a prolific legal author, who produced *A Booke of Christian Ethicks or Moral Philosophie*, which is devoted in large part to the analysis of friendship.²⁶ George Wither, author of the frequently reprinted *A Collection of Emblemes*, which includes numerous exemplary moralized discussions of friendship, was a lawyer.²⁷ Richard Brathwaite, author of *The English Gentleman*, was sent by his father to train at the Inns of Court but escaped and devoted the bulk of his prose work and drama to criticizing law and lawyers.²⁸

21. RICHARD TAVERNER, PROVERBS AND ADAGES BY DESIDERIUS ERASMUS 62r (Facsimile ed.: Scholars Facsimiles, 1977) (1569).

22. CICERO, *DE AMICITIA* (Harvard University Press, 1923 ed.).

23. ANDREAS ALCIATUS, *EMBLEMATA* 172-84 (Facsimile ed.: Klincksieck, 1997) (1550).

24. THOMAS ELYOT, *THE BOKE NAMED THE GOVERNOUR* (Dent, 1907 ed.) (1531).

25. FRANCIS BACON, *ESSAYS* 106-116 (1986 ed.) (1596). 1 and 2 JEAN BAUDOIN, *RECUEIL D'EMBLEMES DIVERS* (Facsimile ed.: Université de Lille, 1987) (1659), for example, translates Bacon extensively in his moralizing essays on friendship.

26. WILLIAM FULBECK, MASTER OF ARTS AND STUDENT OF THE LAWES OF ENGLAND, *A BOOKE OF CHRISTIAN ETHICKS OR MORAL PHILOSOPHIE: CONTAINING THE TRUE DIFFERENCE AND OPPOSITION, OF THE TWO INCOMPATIBLE QUALITIES, VERTUE AND VOLUPTUOUSNESSE* (R. Jones, 1587).

27. GEORGE WITHER, *A COLLECTION OF EMBLEMES* (Scholar Press, 1968) (1630).

28. RICHARD BRATHWAITE, *THE ENGLISH GENTLEMAN, CONTAINING SUNDRIE EXCELLENT RULES OR EQUITABLE OBSERVATIONS RENDING TO DIRECTION OF EVERY GENTLEMAN* (1630). Brathwaite was also author of *Mercurius Britannicus. Juridicialis censura; vel Curialis cura* (ca. 1640), which takes the form of a courtroom trial of corrupt judges – “the conscript Fathers.” For discussion of this work, see Peter Goodrich, *Amici curiae*, in *RENAISSANCE POLITICS AND LAW* (Lorna

It would be remarkable, to say the least, if the overwhelmingly legal provenance of the treatises on friendship had left no mark upon the concept or figure of amity. There has been some discussion amongst literary historians that notes and comments upon the frequency of legal terminology in the treatises on friendship. Laurie Shannon, in a work with the legally resonant title *Sovereign Amity*, a phrase taken from Montaigne, goes so far as to opine that the juridical terminology creates the equivalent of a set of laws for the private sphere, a “counter-polity,” but Shannon concentrates upon the literary and converses more or less exclusively with the dead.²⁹ She does not, in other words, and perhaps as much for disciplinary reasons as for indifference, address the reality of the legal sources of the concept of friendship or what they mean for any attempt to analyze the practices of amity and enmity within the public sphere. If we take the risk of filling in that blank, we best start with the philology and iconology of the Ciceronian discourse that we inherit.

The Indo-European root of the concept of friendship, according to Benveniste, lies in the term *keiwos*, from which we derive the Latin *civis* and thence the concepts of citizen and citizenship.³⁰ *Amicitia* was never a singular – it was a term that referred to institutional relationships, to “group consciousness” and to what would later be termed legal rights. The referent of *amicitia* was originally that of the kin group, and latterly came to refer to fellow citizens or members of the polity, of the same legally defined group. The cognate Greek words *aidos* and *philein* have similar roots. *Aidos* referred originally to the obligation of the parent to protect their children, and more broadly to the duty of kin to aid kin. *Philein* referred also to a relationship and specifically to membership in an institutional and hence legal group – the family, the city, the state. While Blanchot and his commentators have discussed the Greek etymologies and have noted the strong and continuing connection between friend and comrade-at-arms, thus distinguishing between friend and foe, the juristic roots of amity are given less attention.³¹ In particular, Benveniste’s link between legal subject and friend has been obscured.

Philein also bore a secondary meaning of “to kiss.” In this acceptance, it again carries explicit connotations not only of membership, but also of agreement and thence of contractual obligation or private law. The kiss, as with the *osculum pacis* of Christian community or “brotherhood,”

Hutson & Erica Sheen eds.) (forthcoming, 2004)

29. LAURIE SHANNON, *SOVEREIGN AMITY: FIGURES OF FRIENDSHIP IN SHAKESPEAREAN CONTEXTS* 142 (2002). Further excellent discussions of related themes and texts can be found in LORNA HUTSON, *THE USURER’S DAUGHTER: MALE FRIENDSHIP AND FICTIONS OF WOMEN IN SIXTEENTH-CENTURY ENGLAND* (1994) and JEFFREY MASTEN, *TEXTUAL INTERCOURSE: COLLABORATION, AUTHORSHIP, AND SEXUALITIES IN RENAISSANCE ENGLAND* (1997).

30. 1 EMILE BENVENISTE, *LE VOCABULAIRE DES INSTITUTIONS INDO-EUROPÉENES* 337 (1969).

31. SIMON CRITCHLEY, *ETHICS, POLITICS, SUBJECTIVITY* 256-57 (1999); MAURICE BLANCHOT, *POUR L’AMITIE* 35 (1993); DERRIDA, *THE POSTCARD*, *supra* note 15, at 6-14.

symbolized both recognition and contract, mutual ties and a constitutional belonging together.³² The kiss marked a founding pact and “made the *philoi* into contracting parties.”³³ At the level of etymology, the root meaning of friend bears not one, but two connotations of law. Friendship was a sign of belonging to the same legal group – family, city, state, or constitution – and it marked a contract of reciprocity between friends. While Benveniste’s sources were primarily Homeric, the later tradition bears out both of these juridical ties of amity with remarkable precision.

Although the Renaissance authors derived the *topos* from Cicero, it was Aristotle in the *Nicomachean Ethics* who first observed that “friendship and justice appear . . . to be about the same things, and between the same persons.” He goes on to state that good legislators “pay more attention to friendship than to law.”³⁴ For Aristotle, friendship is the first law, or law of laws. It forms the rhetorical or, as we would put it, communicative and moral basis of community. It is law at the level of custom and precedent and coincides very directly with what the Roman tradition termed the normative function of law, namely *instituere vitam* or the institution of life – meaning in essence the marking of the symbolic places, the dignities and obligations, of the social.³⁵ It is just such a long-term structure or prior law that common lawyers refer to the vagaries of time beyond memory, or to the tacit and illiterate consensus of men.³⁶

At the level of method, Aristotle also first stipulated that the friend was another self and that amity thus developed according to the logic of similarity.³⁷ The first norm of friendship was also the founding rule of legal method whereby lawyers were to reason by analogy and were bound ineluctably *procedere ad similia*, or to do the same thing in similar circumstances. Although the theory of analogy originates in grammar, it was adapted by lawyers to the ordering of the social and to the repetitive institution of the places, the obligations, or *vincula*, which tied citizens together as normative subjects and as virtuous friends.³⁸

32. NICOLAS PERELLA, *THE KISS: SACRED AND PROFANE* (1969) is a wonderful resource on the history and practices of kissing.

33. BENVENISTE, *supra* note 30, at 341. One can equally note that the kiss formally sealed the ‘alliance d’amours’ of the courtly tradition and the courts of love. See ANDREAS CAPELLANUS, *TRACTATUS DE AMORE* (Duckworth, 1982) (1235), a text that has interesting parallels with the tradition of *amicitia*.

34. ARISTOTLE, *NICOMACHEAN ETHICS* 235, 252 (Vincent, 1846).

35. DIGEST 1.3.2 (Alan Watson ed., Univ. of Penn. Press, 1987) (535). This passage is glossed in PIERRE LEGENDRE, *SUR LA QUESTION DOGMATIQUE EN OCCIDENT* 106-08 (1999).

36. 1 BLACKSTONE, *COMMENTARIES* 63-64 (defining custom as *tacito et illiterato hominum consensus et moribus expressum*, the tacit and illiterate consensus of men and the expression of mores and law).

37. ARISTOTLE, *supra* note 34, at 274, 291.

38. For an overview, see PETER STEIN, *REGULAE IURIS: FROM JURISTIC MAXIMS TO LEGAL RULES* 53-67 (1966). For further discussion of analogy and anomaly, see Peter Goodrich, *Pierre the Anomalist: An Epistemology of the Legal Closet*, 57 *MIAMI LAW REV.* 791 (2003).

Moving to the Renaissance, and the reception of Cicero's *De amicitia* in particular, the juridical themes underlying the concept of amity are repeated in accentuated or structural forms. First a surprising, or at least unacknowledged, philological clue. At the base of the reception, and structuring its subsequent form, lies Cicero's definition of friendship as *omnium divinarum humanarumque rerum . . . consensio* ("agreement in all things divine and human"). This wording would have been familiar to Renaissance scholars as the classical definition of legal science that is attributed to the Roman jurist Ulpian in Book 1 of the *Digest* and is reiterated by Justinian at the outset of the *Institutes*. Jurisprudence was *rerum divinarum humanarumque scientia*, or knowledge of all things divine and human.³⁹ This suggests an *exemplum*, meaning that it is part of a practice of examples, or legally a system of precedents.⁴⁰ The use of the juristic formula that defines the scope of legal knowledge to depict the parameters of the contract of friendship ineluctably places the discourse of amity within the genre and doctrine of law.

Remaining at the level of the constitution of the social, Cicero explicitly aligns friendship with the law of nature, and illustrates this derivation with the example of the love that exists between parents and children.⁴¹ This thesis is in part an elaboration of the legal duty of the child to obey the parent, again with a source in the *Digest*,⁴² but it is also a statement of a natural order of affection and of similarities that makes the *civis*, the city-state or Rome, possible: "[B]etween us all there exists a certain tie which strengthens with our proximity to each other. Therefore, fellow countrymen are preferred to foreigners and relatives to strangers, for with them nature herself engenders friendship."⁴³ Cicero here makes explicit the dual order of the polity as expressed through friendship for father and fatherland: amity is part of the law of nature, and it is an institutional relationship – a norm of vicinity and proximity, and thence of citizenship.

The didactic iconography of friendship as represented in the various and usually legally authored books of emblems repeats the topos of a law of friendship that binds the polity and arms the state. The visual tradition can be traced first in the figure of *Concordia* who represents both law and friendship. Consider the late medieval painter Ambrogio Lorenzetti and his celebrated cycle of paintings, which includes the allegory of good government, *Il Buon Governo*. The relevant portion of the painting (*figure*

39. DIGEST, *supra* note 35, at 1.1.10.2 ("Iuris prudentia est divinarum atque humanarum rerum notitia"); JUSTINIAN, INSTITUTES 1.1 (Birks ed., 1987). The wording I use is taken from SIR JOHN DODERIDGE, THE ENGLISH LAWYER 29 (facsimile ed., Professional Books 1980) (1632).

40. For a discussion of *exempla*, see HUTSON, THE USURER'S DAUGHTER 30, 52-76 (1994).

41. CICERO, *supra* note 22, at 26-27.

42. DIGEST, *supra* note 35, at 1.1.2 ("Pomponius") (*Deum religio: ut parentibus et patriae pareamus*: "Just as we are bound by obligation to God: so we must obey our parents and our fatherland").

43. CICERO, *supra* note 22, at 19-20.

1 on page 234) shows *Justitia* seated beneath *Sapientia* and the scales of justice, while below her the figure of *Concordia* holds a rope assembled from the two scales or aspects of justice. This rope passes from *Concordia* to the good citizens, the councilors of Siena, who hold her cord in their hands. The rope clearly signifies the *vinculum iuris*, or bond of law, and this bond that ties the group so closely together is also what is meant by friendship. In one canonist maxim, *corde creditur ad iustitiam* – “the judgments of the heart lead to justice” – and equally because in medieval Latin *corde* also means cord or rope, the bond that ties is best illustrated by the thread of justice and amity that runs between the group of citizens.⁴⁴ *Corde* means both rope and internal tie, cord or heart. It refers to both *vinculum* and *iuris*, both rule of law and affective bond.

Whatever the preferred interpretation of Lorenzetti's *Concordia*, the juristic tradition of emblems – of *effigies amicitiae* – consistently figures friendship in the form of sovereignty and thus in the form of law.⁴⁵ The immediate visual provenance of the figures of friendship as *Concordia* lies in the common representations of the sovereign as armed with both a sword and a book, weapons and laws, force and friendship. The moralizing maxim that traditionally accompanies the two facets of sovereignty is most usually again derived from Roman law and dictates that the sovereign must govern *legibus et armis* – by arms and laws. The legal text upon which this emblem of sovereignty is based is the dedication of the *Institutes*. The dedication states: “Imperial majesty should not only be graced with arms but armed with laws.”⁴⁶ If the laws were not immediately a matter of force, they were persuasive in genre, and they were defined, just after the clause cited, as the “art” of justice, meaning in practice the commonality of citizen and friend. In another version of the figure of the sovereign, again with sword and book in hand, the text explicitly stipulates that he devote his love to skill in arms and in the arts. The most obvious feature of coincidence between the two figures of the sovereign lies in the image or persistence of sovereignty itself. When friendship is portrayed by the figure of majesty, it connotes both a literal joining of legality and amity and an elision of the body of the triumvirate of arms, laws, and arts.

Friendship is also portrayed from early on as a sovereign. It often takes the form of the many-armed figure titled *Concordia insuperabilis*, or “unbreakable agreement.” *Concordia* is represented by a crowned or royal

44. J.H. BAXTER & C. JOHNSON, *MEDIEVAL LATIN WORD-LIST* 106-07 (1934).

45. It should be noted that *imago* and *effigies* have a complex legal history that cannot be pursued here. Suffice to say that these visual forms constituted living representations of the governance of things. The *imago* was explicitly *paternae imago substantiae*, the image of the substance of the father, and it ruled in the eras of *pietas* by dint of being more real than the body. See T.G. Watkins, *Tabula Picta: Images and Icons*, 50 *STUDIA DOCUMENTA HISTORIA ET IURIS* 383 (1984); PIERRE LEGENDRE, *LES ENFANTS DU TEXTE: ETUDE SUR LA FONCTION PARENTALE* 189-90 (1992).

46. JUSTINIAN, *supra* note 39, at Dedication.

principal with three arms coming out of each shoulder. On the right side, in the version reproduced by Alciatus, *Concordia* holds a sword, a spear, and a scepter, and on the left side a shield (*figure 2*). The text accompanying the emblem indicates in its earliest versions that the sovereign rules best when he unites the many into one faith and one love. *Concordia* is a principle of three-fold fraternity or, in Cesar Ripa's version, of three brothers who lived together so intelligently that they seemed to be one person.⁴⁷ In its 1611 version in Rollenhagen, the motto for *Concordia* reads that nothing and no one can break asunder the compact of faith and friendship.⁴⁸ In later versions of the figure, it is explicitly friendship that joins arms and laws in one body politic. For George Wither, *Concordia* represents "many Faculties, or Friends"—thus, the dual bonds of the state and the luster of power, of art and arms held together in one corpus, both visible and innate.⁴⁹

If *Concordia insuperabilis* represented the public face of amity and law – what the Anglican divine Jeremy Taylor termed "friendship for the world"⁵⁰ – it needs also to be recollected that concord, or agreement, equally implies contract. The other face of amity can be traced in the terminology of social compact, but also and more often in the language of mutual agreement of will that litters the treatises and finds visual expression in the image of hands clasped together under a heart. In a further depiction of *Concordia*, Alciatus reproduces the figure of two men – two warriors – shaking hands (*figure 3*). That visual theme of joined hands, of the expression of agreement, receives numerous other representations in emblems that depict friendship using clasped hands and a heart or some other indication that the will follows the outstretched arm. The text for such depictions of agreement usually is expressly contractual. For Alciatus, the joining of hands signified what lawyers term "mutuality" – explicitly, an exchange of wills in which each party gives an equivalent thing to the other.⁵¹ Similarly, for Wither, the joining of hands marks an act of good faith or *bona fides*, and he versifies that ". . . ev'ry man confest it be, / That Hand and Heart together should agree."⁵²

The words used require commentary. The motto for Wither's first emblem is "en dextra fidesque," and it is repeated in other emblems of friendship in the explicitly contractual formulation "bona fide" (*figure 4*). This term is neither innocent nor incidental. The clasped hands are figured

47. 2 CESAR RIPA, *ICONOLOGIA* 61 (facsimile ed., Universite de Lille, 1989) (1602).

48. 2 GABRIELE ROLLENHAGIO, *NUCLEUS* 45 (facsimile ed., Universite de Lille, 1989, 1611) (*Concordes superare potest vis nulla, nec ullus / Disrumpet fidae foedus Amicitiae*).

49. WITHER, *supra* note 27, at 179.

50. JEREMY TAYLOR, *A DISCOURSE OF THE NATURE, OFFICES, AND MEASURES OF FRIENDSHIP* 11 (Chapman Hall, 1920) (1657).

51. ALCIATUS, *supra* note 23, at 46.

52. WITHER, *supra* note 27, at 230. See also ROLLENHAGIO, *supra* note 48, at 79.

under a crown, and this visual indication marks a literal bonding or banding of sovereignty and amity. It is indeed God towards whom the hand is held out in another emblem signifying the archetype of agreement between man and divinity (*figure 5*).⁵³ Faith, *fides*, was the key term in the Renaissance theory of the constitution. In Sir Thomas Smith's *De Republica Anglorum*, it structures the mode of belonging to the polity: "[A]ll land in England is holden in *fee* or *feodo*, which is as much as to say in *fide* or *fiducia*: that is, in trust or confidence." He adds that the Prince is not "*virī domini*, but rather *fiduciarij domini*."⁵⁴ In common law, property is still held in *fee simple* or sometimes in *feu*, and this language of faith continues to act as a juristic mark of the "indissoluble band" of amity or citizenship.⁵⁵ The compact with the state is repeated in the good faith agreement that constitutes the obligation binding individuals together in the social, or forming the subjects – or "other selves" – who contract the "willing bondage" of friendship.⁵⁶

The use of the term *bona fides* refers directly to contract as a volitional obligation, and it should also be noted that the use of the word *confest*, or "confession," which Wither versified, itself also refers to the standard Renaissance definition of contract as a "confession of will."⁵⁷ To this we can add the juristic significance of *consentio*, or consent, the criterion by which Cicero defined amity and which his commentators lengthily extrapolated as the mode of agreement – *consensus ad idem* – by means of which the friend, or *alter idem*, entered the contract of friendship. The derivation of so much of the language of amity from the *exempla* or texts of law suggests that the contract of friendship was anything but a private law or romantic "counter-polity"; it was constitutional and marked both the bond between subject and state and the *vinculum*, or legal tie, between citizens. The latter aspect of friendship signifies directly the social pattern or institutional nature and function of friendship within the humanist

53. WITHER, *supra* note 27, at 244. The motto reads monotheistically as "one mind, one faith" (*fides concors*).

54. SIR THOMAS SMITH, 139 DE REPUBLICA ANGLORUM (Cambridge Uni. Press, 1982) (1583). This definition is repeated verbatim in FRAUNCE, LAWIERS LOGIKE 81 (facsimile ed., 1984) (1588).

55. The expression "bands of indissoluble love and amity" comes from THOMAS HOOKER, OF THE LAWEES OF ECCLESIASTICAL POLITIE vi (Cambridge Uni. Press, 1996) (1617). It is well discussed in JAMES MARTEL, LOVE IS A SWEET CHAIN 17-19 (2001).

56. The expression, which again derives from a Ciceronian topos, is from the aptly named THOMAS CHURCHYARD, A SPARKE OF FRENDSHIP AND WARME GOODWILL cv (1588) ("For friendshippe is a certaine felicitie of the minde, a sweet ensence that burnes before God, a preserver of mans renowne and life, a willing bondage that brings freedome forever, a steadfast staffe that all good people doe stay on, the mother and nurse of mutuall love, the conqueror of hate, the pacifier of quarrels, the glorie of kings, and the suretie of subjects.").

57. WILLIAM WEST, THE SYMBOLAEOGRAPHY, THE ARTE OR DESCRIPTION OR IMAGE OF INSTRUMENTS, OR THE PATTERNNE OF PRESIDENTS OR THE NOTARIE OR SCRIVENER (Society of Stationers, 1590), went through several printings and would have been well known to Wither. It defines a formal contract as the means whereby a man "confesses himself by writing." *Id.* at Bk I fol. A8r.

tradition.

The first figure of friendship that appears in Wither's collection portrays hands touching over a cross with wrists bound by a rope, the cord of *Concordia*, under the Hebrew name of God. The motto for this emblem is *coniunctis votis*, which translates best as "joined by desire," but more literally means "bound by a promise" in the eyes of God. If Wither portrays friendship as the sacred basis of community, it is accurately represented in theological terms as the shared faith – the marriage – that underpins community and makes sociality possible. It is through law (*per vincula*), according to another emblem whose image portrays friendship as two branches bound together by rope, that society is possible. Friendship, however, is a special kind of law. It introduces *caritas* into the practice of legality, and it is precisely from this concept of care that comes the primary private law bond of community – the "duty of care" that we owe to our neighbor in the law of obligations (torts). What is at issue is a notion of the neighbor as friend, as someone in a position of trust. In Selden's depiction, he is a person in whose stead one will stand.

He who passes his word for anothers good behaviour, or good abearing, and is become his security; is said to have such a one in his Borgh: Being engaged upon this account to the Government, to answer for him if he misbehave himself. And hence it is, that our people . . . call those that live near them, or as I may say next door, Neighbours.⁵⁸

Without expanding upon the legal details of this concept of trust or surety, the neighbor is a friend and is defined precisely as another self.

The other common figure of friendship takes its cue from Cicero's thesis that proximity and familiarity are the first sources of amity. In a language that conflates kinship and neighborhood, the word "friend" is frequently a synonym for the familiar and provides the source for a common image of the community of friendship. Peacham most strikingly offers an image of the friendship of neighbors – *vicinorum amicitia* – and initially portrays this concept in the figure of a cluster of trees standing together.⁵⁹ The common law promulgated the laws of the land, the *leges terrae*. These were defined by Coke and others as a communal or shared inheritance, the property of neighbors. Peacham captures this brilliantly in a later emblem of friendship as community, pictured in the form of two trees bent over and touching each other, forming an arch through which the community of the faithful can be seen (*figure 6*). It is a figure that uses

58. JOHN SELDEN, TRACTS 39 (1610). The tract in question is titled *Jani Anglorum facies altera*.

59. HENRY PEACHAM, EMBLEMATA VARIA 11 (facsimile ed., Scholar Press 1976) (1621). On the *lex terrae*, a term frequently used by Coke, Selden, and other "sages" of the common law, see Peter Goodrich, *Eating Law: Commons, Common Land, Common Law*, 12 JOURNAL OF LEGAL HISTORY 246 (1991).

classical juristic cues. The first of four emblems of friendship that Alciatus depicted was that of a vine entwined around a large dead tree. The Latin motto translates as “friendship too lasts beyond death,” and the tree and vine thus signified a Christian, or in Ciceronian terms, eternal friendship: a community that is marked by locality and prospect, and that finds its most perfect expression in the afterlife. Baudoin, using the same emblem as Alciatus, roughly a century later, cites Francis Bacon and argues that the friend “has two lives in his desires” because after he dies, his friend, “another himself,” will carry on his projects and attend to those for whom he cares.⁶⁰

AMITY AND THE LAWS OF DESIRE

The parade of etymology, philology and iconology, this heedless erudition of the forms of the past, is necessary to an understanding of what the immense rumor and its laws of friendship mean. First off, and again by way of historical reconstruction, when the authors of treatises on friendship refer, as they so frequently do – as Derrida also does – to laws of amity, that reference should be understood quite technically. The laws of amity mark the interior jurisdiction of sociality, of the possibility of justice. Thus, in their most graphic illustration, they distinguish friend from outlaw – a legal subject from someone who could be killed upon sight and whose property could be taken at will. Friendship was in this regard initially a foundational category, the mark of the *proprium* that defined competence and belonging. According to early legal sources, the outlaw – the common law version of the Roman *homo sacer* – was defined explicitly as an exile, “a friendless man, and so it seems he forfeits his friends,” who could neither be fed nor in other form communicated with.⁶¹ To belong within the institution, to be a friend, meant to be subject to the law.

The structural antinomy between friend and friendless, subject and outlaw, is most often taken from Plutarch’s distinction between true and false friends, elaborated at length in his essay, *How to Distinguish a Friend from a Flatterer*.⁶² The distinction betrays the function of the law of amity as circumscribing an internal order or interior constitution in which friendship – or being and belonging together – comes at the price of the observance of certain constitutional rules. The most significant threat to, indeed the antonym of a friend, was an outlaw, a lapsed or counterfeit

60. 2 JEAN BAUDOIN, RECUEIL D'EMBLEMES 382 (facsimile ed., Universite de Lille, 1987) 1659).

61. HENRY DE BRACON, DE LEGIBUS ANGLIAE 2 Cap XIII (Harvard Univ. Press, S.E. Thome ed., 1968) (1186). On the Roman law tradition, see GIORGIO AGAMBEN, HOMO SACER 71-75 (1998).

62. 1 PLUTARCH, MORALIA 273-371 (1962). THOMAS CHURCHYARD, A SPARKE (1588), borrows its structure from Plutarch’s essay, and THOMAS ELYOT, THE BOKE (Dutton, 1978) (1531), also offers a synopsis of that essay.

friend. Plutarch's flatterer was dangerous because he was so like a friend and could in general play the part "with the gravity of a tragedian."⁶³ The flatterer or illicit friend threatened the interior order of the institution, or, to borrow from another treatise: "That much worse is the amity of a fayned friend and fantastickall, than the malice of an open enemy."⁶⁴ If the function of law, according to the classical formula, was to institute life, then law had to spell out the interior forms of how we are to live together in the city and latterly in the institutions or everyday modes of the professions. The body had to be made prisoner of the soul, and this required an inscription of interior norms – the legal or, more loosely, the licit modes of being and being together.

As fits with an interior jurisdiction, the laws of amity are both ecclesiastical and civil. They are the spiritual laws of an ecclesiastical "ghostly power," of conscience determined *in foro interiori*, and they are the common law of a "nursing father" who watches over the secular realm.⁶⁵ Starting with the higher order of law, the emblem *fiducia concors* – or the agreement of faith that Wither reproduces – depicts a single hand outstretched towards heaven with an angel passing by. This image represents the first and perhaps the most remarkable doctrinal norm of friendship, namely that amity as an idea or ideal is impossible in this world. There is no hand of God stretching out to touch or clasp the outstretched fingers. The angel flies over or passes by. The image graphically represents the Christian ideal of friendship as faith rather than materiality: the temporal hand stretches towards an infinite hope, towards an afterlife that temporality is by definition denied.

The impossibility of true friendship finds direct expression in a legal tract on ethics by the Renaissance lawyer William Fulbeck. He defined temporal friendship as a lure to voluptuousness and warned that it threatened the prospect of salvation: "And had he not been better to have chose[n] a solitary life at the first, that is not to have reposed his confidence in friends, but to have wholly relied upon God." The secular friend represented the threats of multiplicity and difference as well as the likelihood of distraction from the pursuit of perfection that God required. He concludes that it is best to abandon all temporal friendships, to love God and live as a hermit or "perfitt solitarian."⁶⁶

For Fulbeck the perfect temporal friend, the other self that Aristotle and Cicero depict, is "an imagined friendship" and does not correspond to any

63. PLUTARCH, *supra* note 62, at 273-75.

64. THOMAS BREME, *THE MIRROR OF FRIENDSHIP* fol. Bv (1584).

65. This expression is taken from ROGER COKE, *JUSTICE VINDICATED FROM THE FALSE FUCUS PUT UPON IT* BY THOMAS WHITE GENT., MR. THOMAS HOBBS, AND HUGO GROTIUS 21, 98 (1660). Another very explicit discussion can be found in CALYBUTE DOWNING, *A DISCOURSE OF THE STATE ECCLESIASTICAL OF THIS KINGDOME IN RELATION TO THE CIVIL* 68-75 (1633) (discussing the question of the "temper" and "humours" of the subjects of law).

66. FULBECK, *supra* note 26, at 55-56.

temporal possibility. Granted that we cannot have such friends in the mortal realm, asceticism is preferable to the confusion or distraction of carnal friendships. The multiplicity of others offers only the possibility of discord and confusion, in support of which conclusion Fulbeck offers the implausible example of dance.

If he be a dancer, his Stoical friends are at his elbow with a pair of pinsors to keep him in tune. If he be no dancer, his Epicurean friends think him straightway to be in a trance, that he is dispossessed by lively sprites, that he is inflamed of a foolish zeal, that he is allured by pulpit persuasions, as if they should say he was tempted by God.⁶⁷

Granted that friends, by virtue of their diversity, cannot all be sufficiently alike of temperament, mood, or interest to be “other selves,” God alone has the necessary constancy, the permanence and virtue, that mark the ideal friend.

The secular tradition takes up this dictate of religious law in the form of the rule that true friendships are “infrequent or strange among mortal men,” so much so that “amity may now unneth [scarce] be known or found throughout the world.”⁶⁸ True friendship is sufficiently infrequent – it occurs but once every three hundred years – as to be in the reality of practice either a phantasm or a speculative hope. Even for Montaigne, who briefly enjoyed a perfect friendship with Etienne de la Boétie, the bliss of true friendship was brought about “by some decree of heaven.” It “had no model but itself,” and was “so perfect a union that the seam which has joined them is effaced and disappears.”⁶⁹ It is against this background of an unattainable ideal or heterotopia of imagined or perfect amity that the more specific and secular laws of institutional amity, of citizenship and relationships of familiarity, neighborhood and care have to be placed.

The laws of amity structure the social emptiness occasioned by the romanticized absence of the friend. That there is no friend, that the will of the friends takes precedence over the impossible desire for a true friend, is the primary condition of institutionalization. Allegiance must be to the group or band of friends, to the brothers, the guilty horde. At the same time, the good subject waits and hopes for the love of a singular or true friend who will come later, after the institution, in the off hours or after death.

The secular laws of amity, the terms of the contract of imperfect or secular friendship, obey a comparable structure to the religious importuning of the divinity. The most formal list of “articles, precepts, or statutes of the lawe of Amitie” is presented in a brief treatise on friendship

67. *Id.* at 52.

68. ELYOT, *supra* note 62, at 132.

69. MONTAIGNE, ESSAYS 97 Penguin Books, 1958) (1580).

published in 1589.⁷⁰ The governing principle of Dorke's version of the *lex amicitia* is taken directly from Cicero: "Friendship is a perfect consent and agreement with benevolence and charitie in all things, appertaining as well towards God as men."⁷¹ These are laws, in other words, of the dual polity that the *Digest* instates. The subsequent substantive norms or precepts are couched in terms of a faith that ultimately is directed towards a deity or eternity that can never be reached by the living.

Formulated as twenty positive norms, there are seven principal precepts that dictate the practice of the perfect friend. The first is that "friendship is to be esteemed more than all worldly things," a norm that establishes the spiritual jurisdiction of friendship and the ghostly or eternal character of this legalistic figure. This rule is broadly constitutional: friendship is a law of laws – it is the sign of membership of the dual realm, or civil and ecclesiastical polity. The friend here is a familiar rather than a stranger, and most emblematically, a citizen and not an outlaw. This jurisdictional regulation is primary, and it opens the space of all of the subsequent rules that demarcate how the perfect friend differs from the illicit or counterfeit friend, Plutarch's flatterer, or some other variant upon the friend in "bad faith." This friend is the structural equivalent of the outlaw at the level of contract or of the intimate public sphere.

The second rule is that "friendship cannot be where vertue is not." This again recites Cicero and here marks the political character of friendship as the constitutive aspect not simply of "manners" or of acting together, but also of the subordination of amity to the common good or the cause of law. This priority of law over friendship, the counter-intuitive but nonetheless all too real notion that *amicus* is first and foremost *amicus curiae* – a friend of the court and of law – is reiterated in precept 9: "If our friends conspire against the commonwealth, we ought to forsake them, and also reveal them." So important was this particular theme that we find it emblemized by the lawyer Wither in the form of a hand holding a snake and versified as the moral: "I would not heare my friend prate / Those things, of which I must inform the state: And, seeme unfriendly; or, else leave to doe, / That which a stronger Band obligeth to"⁷² (figure 7). The friend is first a friend of the world, a son of the father, and only latterly – and always elsewhere or strangely – an intimate.

The next precept is perhaps the most time honored and frequently repeated: "A faithful friend is as a mans own self." For Aristotle this norm

70. WALTER DORKE, A TIFE OR FIGURE OF FRIENDSHIP. WHEREIN IS LIVELIE, AND COMPENDIOUSLIE EXPRESSED, THE RIGHT NATURE AND PROPERTIE OF A PERFECT AND TRUE LOVE fol. A4v (1589).

71. *Id.* The source is CICERO, DE AMICITIA, *supra* note 22, at 20-21.

72. WITHER, *supra* note 27, at 247. See also CHURCHYARD, *supra* note 56, at fol. B2v ("And some of excellent judgement held opinion, that the love of their countrie did farre surpass the love of their parents, in defence of which they offred lives, lands and goods, and cared not what danger they should thrust themselves into, so that thereby they might doe their countrie any honour or service.").

meant that we start by loving our self and then treat the friend as our self: "The feelings of friendship . . . seem to flow from the feelings of a man towards himself."⁷³ Cicero, Montaigne, Bacon, Churchyard, and Wither all reiterate this rule of what appears to be an essentially narcissistic genesis of amity. Surprisingly, however, the notion of the friend as "another himself" is not in the first instance a species of *amour propre* – of self-projection onto the other. It is rather a legal principle that refers to an interior order or hierarchy of knowing. Far from being a secondary occurrence of the mirror phase, the similarity that is sought in the friend is rather and more simply a similarity of faith, a shared knowledge of the "band" of belief that holds together the sovereign and the polity as *philotes*, as citizens or friends in law. That we start from the self, as Fulbeck so explicitly represented it, means that we start from our relationship to God. It is that epistemic similarity, a relationship to the eternal, which we seek in the other as perfect friend or as image of God. Wither, to take another emblematic example, offers an image of friendship as immutable knowledge and describes this principle as the interiority of friendship: it is not found without but must be searched for within. In somewhat tortured verse he concludes: "Lord, I am friendless lest; therefore, to me, / This knowledge, and this friend, vouchsafe to be."⁷⁴

The theocratic principle of amity, the sorry precedence of *caritas* – Taylor's friendship for the world over any actual or visceral relationships – gains further expression in the rule that "friendship cannot be changed no more than nature, but is of continuance." This rule borrows, again from Aristotle, the idea that friendship is unanimity, or in Renaissance terms, concord, whereas difference is discord and decay. For Cicero, too, the friend must be unchanging – friendship is eternal – or the relationship must be dissolved. This is, again, a symptom of the literal sense in which "faithful friendship" is invoked. It is precisely a friendship in faith, a way of knowing the divinity within, a mode of reading – through *caritas* – a world that only ever appears to be external.

It is in the end the individual who exists in solitary relationship to the eternal or has a friendship modeled on a monotheistic concept of God. It is not the space of relationship or the in-between of actual friendships that is sought or desired, but rather the singular friend that is an avenue or conduit to the eternal. The Christian *osculum pacis* can illustrate the point: the function of the kiss of brotherhood was to allow Christ to pass between the friends, and thus the insufflation of osculation marked a deep passage from the body to the communion of souls.

The spiritual kiss is characteristically the kiss of friends who are bound by one law of friendship; for it is not made by contact of the

73. ARISTOTLE, *supra* note 34, at 274.

74. WITHER, *supra* note 27, at 145, 187.

mouth but by the affection of the heart; not by the meeting of the lips but by the mingling of spirits, by the purification of all things by the Spirit of God.⁷⁵

The point is made visually in another, somewhat later emblem, which shows a vacant looking glass and offers the spiritual advice that “in looking at me, you see yourself,” because it is not in the self but only in Christ that the Christian truly lives.

In a similar though less graphic vein, the other laws of friendship dictate the negative frame that alone will allow for communion with the divine. Fulbeck, of course, suggested the life of a hermit, but other lawyers were satisfied to stipulate caution rather than complete abstinence. Thus, most strikingly, friends should not be too intimate, for fear that they discover differences and so dissolve their feelings of affection. In Dorke’s formulation, a friend should preserve a “modest bashfulness”; he should not be a “tale carrier, nor a tale creditour”; and then finally, to mark a point, he should ask “only what is lawful.”

Even if the laws of friendship seem both otherworldly in intention and impractical in the extreme, it should be noted finally that Dorke’s laws continue a tradition in which the rules of friendship were intended as criteria governing communal practice. The rules were the code of moralized public, or what we now term professional relationships. Even if the laws spelled out the contours of an ideal – of an impossibly “perfect” or “eternal” amity – they were nonetheless practical guidelines for choosing friends and evaluating the inevitable failings of merely temporal relationships. Here then we can formulate a final trajectory and paradox. The laws of friendship became ever more expansive. Cicero cites only four laws, but Dorke tabulates twenty. The expansion suggests a fragility or a growing challenge to the laws. The more that Dorke and others pronounce upon the necessity of loving God and being an obedient legal subject through practices of separation and silence, the more desire presses against the barrier of repression.

The ambivalence that is implicit in Fulbeck’s example of dancing, or in the lengthy depiction of a penetrating kiss that passes Christ between the osculating and aroused friends, is made explicit in figures from slightly later in the tradition. Prohibition is necessary because of desire. Dancing, kissing, touching—all modes of arousal—present instances of a highly attractive expression of amity. They may present these forms of desire in the mode of denial but they present them nonetheless. They are possibilities, and the multiplication of laws suggests that they were increasingly practiced. The paradox of the law and the irony of its proliferation is that it renders ever more explicit the sense in which the immense rumor was also and increasingly a somewhat strangled

75. AELRED OF RIEVAULX, *SPIRITUAL FRIENDSHIP* 2:26 (Cistercian Publications, 1977) (1147).

expression of ambivalence – a double gesture of constraint and desire – of conformity and transgression. It is in the negation of the singular friend, in the denial of the present tense, that the immense rumor manifests its excess. It expresses what it desires in the form of a prohibition, and so in reading it eroticizes the singular friend by making him unobtainable. It is an old trope, but it gains beautiful and radical expression in images from the late Renaissance.

Richard Brathwaite, a critic of the law, and of sobriety more generally, famously portrays friendship in the figure of two men embracing. This figure has been extensively discussed by critics as an instance of homoeroticism, but it equally expresses the law. Its Latin motto reads, “love of virtue is a secure thing,” and the chapter on amity, significantly titled “Aquaintance,” recycles the classical laws that define the friend as another self and enjoin secrecy, constancy, and fidelity (*figure 8*).⁷⁶ My point is that the image of the men hugging – or I would actually say dancing – is a very graphic suggestion of amicable eros and of a friendship bound to the quick – to the quickstep even – rather than to the dead. A moralizing emblem from the mid-seventeenth century can make the point even more strongly. Albert Flamen portrays two men, one crowned, the other in rags, kissing, seemingly hastily, under a gnarled and stunted tree. The tree stump signifies a broken law, and the motto reads “non bene convenit,” which translates best as “it leads to no good” (*figure 9*).

What is striking, however, is that the picture itself portrays a touchingly explicit expression of desire. Despite or more accurately because of the moral, the picture presents a paradoxically real and visceral desire – a peculiarly explicit insufflation or kissing – a breach of the law that seems curiously desirable.⁷⁷ Here then, at last, visually if not verbally, by act rather than intent, the immense rumor is shown off as an obstacle to thought, or, at best, as a symptomatic expression. This picture indicates a terminus to the tradition of the immense rumor, a desire to end the recycling of an antique law which practice no longer respects and which theory should discard. It evidences at the very least an ambivalence relating to a rumor that defines friendship by means of a prohibition and enjoins a practice of asceticism or lack. Such ambivalence, however, has tended to precede any direct address. Friendship remains inscribed in “the said of the unsaid”⁷⁸ and hence an occlusion, a default mode of

76. BRATHWAITE, *supra* note 28, at title page. The emblem is discussed in Alan Bray, *Homosexuality and the Signs of Male Friendship in Elizabethan England*, 29 HISTORY WORKSHOP JOURNAL 1-19 (1990); MASTERSON, TEXTUAL INTERCOURSE 28-37 (1997); Peter Goodrich, *Amici Curiae* 55-60 (forthcoming 2004). For Brathwaite's views on sobriety, see BRATHWAITE, THE LAWS OF DRINKING: A SOLEMN JOVIAL DISPUTATION, THEORETIKE AND PRACTICKE, BRIEFLY SHADOWING THE LAW OF DRINKING . . . FREELY AND FULLY DISCUSSED ACCORDING TO THE CIVILL LAW (1642).

77. This theme can be traced most usefully in the recent and extraordinarily meticulous historical work, ALLAN BRAY, THE FRIEND (2003).

78. DERRIDA, *supra* note 1, at 158.

institutional interactions and a deflection of the intimate spaces of professional being.

THE IMMENSE RUMOR

The immense rumor takes the form of the paradoxical assertion, addressed to a plurality of friends, that there is no friend. While it is tempting to read this paradox *à la moderne* and so to interpret it in a feminist manner as meaning that friendship is *entre deux*, or always two, such a reading would ignore both the juristic history and humanist reception from which this maxim is drawn. Worse, it would offer no contemporary analysis of the practice – the politics of friendship – through which the maxim is repeated and inscribed. The issue, to be very explicit, is not that of what Derrida or others who follow the precepts of amity intend, nor is it a question of what they claim or hint or hide “elsewhere” in rumors or in the privacy of unspoken friendship. It is a question of laws, a matter of a deep structure and its repetition. The immense rumor is initially to be understood historically and according to the rules of its genre: it refers to a canon or theological norm, the dictate that the true or perfect friend is God and that friendship thus comes only after a life spent preparing in absolute singularity – friendless – for death.

Curious or counter-intuitive though it may seem, Derrida’s work on friendship has its roots in the humanist reception of a Judeo-Christian theology and law. His work is indeed remarkable for how explicitly and rigorously he, and those who follow him, inscribe these inherited laws of amity.⁷⁹ Beginning with the rumor of the absence of the friend, it is a rumor that locates friendship outside of life, in the future anterior of mourning, and most succinctly in death. In the interview with which I began, Derrida discusses his relationship with Althusser, and offers a few hints of intimacies past – scenes from the hospital, a glimpse of the tensions of twenty years spent in “the same house,” in the context of Althusser’s death, and in memoriam. The discourse on friendship obeys the law of genre – it belongs to the work of mourning, gaining expression or acknowledgement only after the friend has died and it is possible to express a love that fears neither reception nor rejection.

Remaining with the law of genre, the humanist idiom dictates that friendship is eternal and thus that its only possible inscription comes with a death that immortalizes the friend and inscribes friendship in the

79. JAMES MARTEL, LOVE IS A SWEET CHAIN 94, 161-63 (2001), to take a finely nuanced example, reflects this evacuation of the material or lived dimension of friendship, even while arguing that Hobbes should be disinterred because he had a theory of friendship as presence. There are two moments in Martel’s text where the eros of amity appears on the margins of the liberal theories of friendship. Rousseau at a certain point is cited confessing his illicit love for Emile, his student, his son; and Thoreau is awkwardly captured mourning his love for his brother. In both cases these moments are treated in terms of lack or loss. They are questions of law and of death, of desires that have now to be abandoned or let go, rather than expressions of the presence or charge of friendship itself.

encomium, in the legal forms of effigy, image, and text. The analysis of friendship is constituted by a conversation with the past, and specifically with the letters of dead intellectual friends. Guillaume Budé, the first and greatest of the humanist lawyers, is quite explicit that he had only one true passion to which he had devoted “all the energy and ardor of [his] soul,” and that was to the inhabitants of his library. He had given himself most freely and totally to *Philologia*, whom he describes elsewhere not simply as a friend but as a second wife (*altera coniux*). In pursuit of his passion for philology, for the study of texts, he confesses that he abandoned his brothers, ignored his wife, and neglected the pleasures and profits of worldly pursuits.⁸⁰ His love was directed toward the figure of textual study (*literarum studium*), of historicism, and of a friendship tied to the letters that pass on from those who have passed on.

In the same vein, Derrida’s lengthy treatise on the politics of friendship is devoted quite explicitly to dead intellectual friends and to the eros, the affect or piety of reading their texts. Borrowing from Blanchot, Derrida affirms at the end of his treatise that “friendship could not have been declared during the lifetime of the friend . . . It is thanks to death that friendship can be declared. Never before, never otherwise.”⁸¹ It is the antique law of friendship that gains ample further expression in the litany of *economia*. Derrida’s lists of friendship arrive too late. They only get inscribed upon death, a practice of evasion that started most equivocally with Paul de Man, and which was then tabulated further and sadly in his collection titled not *Friendship*, but *The Work of Mourning*. According to the aetiology of humanism, death takes precedence over the living, and “all-out friendship” involves a practice of looking back or looking beyond.

The point about the genre of friendship is of sufficient importance to warrant an initial attempt at explanation. On one level the apparent necrophilia of the discourse on friendship instantiates a mode of self-protection. It is a maxim of modern law that judges should not cite living judges. Reference to authority means reference to judges of yore, to dead authors or treatise writers, rather than to living brethren. Only the dead have achieved the status of certainty insofar as death has precluded the possibility of changes of opinion or alterations of judgment. By the same token, a friend is only irrefragably a friend once dead and hence incapable of betraying intimacies or changing character or opinion. There is a safety as well as a charge in the death of the friend. At a secondary level, the apparent safety of the genre also functions to keep eros and other intimacies out of the public sphere or idiom of the professions. How we act in relation to friends – the role of amity and enmity in making

80. GUILLAUME BUDÉ, *DE PHILOGIA* 43, 41 (facsimile ed., Université de Sherbrooke, 1989) (1536). For analysis of these passages, see Peter Goodrich, *Transmission and Law; or, a Sorrow Beyond Words*, in GOODRICH, *LAW IN THE COURTS OF LOVE* 138-60 (1996).

81. DERRIDA, *POLITICS OF FRIENDSHIP*, *supra* note 1, at 302.

decisions, in adopting causes or reviewing the claims of scholarship, business, or law – is rendered safer or at least free of any explicit accounting of affect in the present tense. Banishing friendship to the rites of passage or ceremonies of death keeps it hygienically private and squarely in the safety of “another context.”

The next norm of friendship that allows the immense rumor to continue circulating is a prohibition upon criticism of the friend. This norm can be approached elliptically. In his treatise on friendship, Blanchot begins his work, inevitably an elegy to a departed friend, by stating that “we were friends without knowing it.”⁸² His point appears to be that friendship grew gradually and through affinities or similarities that were only perceptible over time and working together. Regardless of his intention, however, the statement also makes the point that friendship was not conscious or known – it only became evident in retrospect and was not acknowledged until after the death of the friend. Friendship exceeds thought, and indeed for Blanchot, who is cited by Derrida: “This is thought’s profound grief. It must accompany friendship into oblivion.”⁸³ Inversely, while it is alive, friendship escapes thought or remains unsaid.

At a more practical level, the non-coincidence of friendship and thought aligns the friend with the ally or comrade at arms, the brother citizen. Loyalty is here more important than criticism, and victory has precedence over truth. Reverting to the example of the interview on friendship in *Negotiations*, its most striking feature is the avoidance of any direct discussion of friendship. This is surprising, granted that the interview was ostensibly directed toward the on-going work on politics and friendship. It would seem to be anxiety, a fear of criticizing and being criticized, that imposes the law of the unsaid. For conjunctural reasons – and aren’t they always the worst – Derrida did not wish to criticize, and did not even wish to *appear* to criticize, Althusser’s position for fear of appearing “suspicious, backward, idealistic, even reactionary.”⁸⁴ He goes on to admit, curiously or perhaps proleptically, the impossibility of even appearing to interiorize criticism of his leftist allies in his work. It made the formulation of his arguments “complicated to the extreme, that is, to the point of making them unreadable.”⁸⁵ At its strongest, the law of amity acts here as a mode of debility and of aphasia: it made debate impossible, it silenced criticism, and it deprived the philosopher of both freedom of thought and felicity of style. These are no small consequences and they need to be elaborated.

Were it not for the intimations of abuse – the intimidation, fear,

82. MAURICE BLANCHOT, *POUR L’AMITIE* 9 (1996) (“On était amis et on ne le savait pas.”).

83. DERRIDA, *POLITICS OF FRIENDSHIP*, *supra* note 1, at 302. DERRIDA, *THE WORK OF MOURNING*, *supra* note 19, at 214, is quite explicit, stating “there are no public words” for this loss.

84. DERRIDA, *NEGOTIATIONS*, *supra* note 6, at 153.

85. *Id.*

isolation and uneasy silence – the irony of Derrida’s recollections would seem almost humorous. For all his ambivalence towards Althusser, he wished to protect him. Althusser preceded Derrida at the Ecole Normale, and especially after the publication of *Pour Marx* in 1965, “he was approaching the zenith of his glory . . . Althusser was the prince of philosophers, the hero of thought who was defying the Communist party authorities, the one who was going to save Marx from Marxism and the Marxists.”⁸⁶ He had, in short, a kind of symbolic status as a Marxist philosopher, as the patron of a circle of influence, and leader of a group of collaborators, students, and friends. Derrida, who back then “was not yet Derrida,”⁸⁷ felt constrained not to criticize the symbol of power and of intellectual paternity that Althusser represented. He gave precedence to the older man, and observed his law as enacted in the main by his friends and disciples – the brothers or sons of the father. Was friendship then a singular law, a feature of a unique conjuncture and one particular relationship? The answer is both that it was unique and that we can find other instances that would appear to repeat this same law or providence. One instance in particular stands out.

At the end of *Politics of Friendship*, Derrida addresses the issue of his own relationship to the immense rumor. In synoptic form, the treatise has relayed a tradition of friendship that is wholly masculine, that honors the brother and glorifies the apparently narcissistic concept of the friend as *alter idem* or another self. As a seeming afterthought – perhaps remembering the trauma of the norm at the Ecole Normale – we read: “Despite the appearances that this book has multiplied, nothing in it says anything *against* the brother or against fraternity. No protest. No contestation.” Familiar though these sentiments now seem, they are placed beyond doubt by way of contrast to the injunction extracted from their opposite: “Maligning and cursing, as we have seen often enough, still appertain to the inside of the history of brothers (friends or enemies, be they false or true). This history will not be thought, it will not be recalled, by taking up *this* side.”⁸⁸

Remarkable though it may seem, the philosophical idiom of friendship here denies the possibility of any criticism of the actual practices, the intimacies and affects of friendship. Loyalty and the appearance of unity are the requisites of a legally inspired conception of friendship, and they offer the full weight of what is implied by the immense rumor. Friendship, the other history of affinities and enmities, the “inside” of fraternity,

86. DOMINIQUE LECOURT, *THE MEDIOCRACY: FRENCH PHILOSOPHY SINCE THE MID-1970S* 11 (2001). Lecourt’s description is fond and uncomprehending: “His intense blue eyes could be cheerful, sarcastic, arrogant; he would often become abruptly shrouded in mists of melancholy for long periods of silence. But the pupil I then was did not possess the key to what I have just written. My friends and I discerned in it the stamp of genius.”

87. *Id.* at 12.

88. DERRIDA, *POLITICS OF FRIENDSHIP*, *supra* note 1, at 305.

cannot be exposed for fear of discord, difference, or the decay of community and unanimity.

Inversely, friendship remains unspoken because love of the friend precludes criticism: "In my own special way, like everyone else, I believe, I no doubt love, yes, in my own way, my brother, my only brother . . . in my family and in my families." As the syntax perhaps already implies, the attempt to explain the silence or the unsaid of friendship, the curiously defined domain of intimidation, fear, and avoidance, defies representation and escapes thought. The unsaid becomes the source or motive of the unreadable. Friendship remains in the domain of the unsaid, or just possibly projected into the future, the realm of the "democracy to come." To the extent fear still lives, friendship is found in the dead hand or cold norm of the law. At the same time, the fact that criticism cannot be spoken also marks the indefinable character or quality of the love that signals friendship mutely from within.

The last law that the immense rumor recycles is precisely that of a love that cannot speak its name. In one sense, this law can be understood quite literally. Like the history of courtly love, to which it is closely aligned, the tradition of friendship is concerned in practice with the circulation of symbols that will improve the status of the brother or friend who manipulates them.⁸⁹ The history is of a homo-social conception of amity. Its referent is a tradition and a practice of fraternity – of the similar being, a man – and of the symbolic instantiation of a masculine conception of relationship and of institution. What Derrida aptly isolates is not simply the banality of this tradition of amity, but also its internal sense of inadequacy. Friendship as we know it within the tradition, friendship as an unthought and potentially malignant thing, is a disappointment. It is an object most often of loss and mourning – we never had it until it was gone – as it is also a site of fantasy and of longing. The other face of the unsaid quality of friendship is thus an ambivalent romanticism.

There has to be a reason for not speaking the unsaid and so for not revealing the internal history of friendship. In the example that I have drawn from Derrida, and at its most superficial, it would seem to have been fear of the censure of the father figure and his acolytes. Beneath that lay a fear of compromising the legitimacy of what the father represented, namely Marxism or "theory" plain and simple. There is also, however, a structure of avoidance at play here. The love of the brother that the tradition of friendship inchoately or silently relays is one which sublimates the eros of amity into an other-worldly love of God and of the absent friend, the friend of "O my friends, there is no friend." Friendship here takes place in the mood of disappointment and in the spirit of a pervasive denial of the body and of the eros of its professional inhabitation.

89. For a comparable analysis of the homosexuality of courtly love, see JEAN-CLAUDE HUCHET, *L'AMOUR DISCOURTOIS* 19-30 (1976).

In the end, because the friend is never enough – or at least because the friend I love may change her mind or may act against me – the law dictates non-exposure or unthinking reproduction of the circuitry of institutional amity. Friendship, which is to say the bond of community and the dictate of unanimity that historically underlies it, requires suspension of any questioning of the value or benefit of an unthinking love of the friend. The temporal structure of friendship thus obeys the law of the future anterior: present friendship is always failing, imperfect, and unsaid. It only ever “will have been” sufficient, or virtuous, or good. By the same token, true friendship is never present – it is the very principle of separation, of distance and death.⁹⁰ This means, in the concrete terms of institutional practice, that the amities and enmities, the love and the hate that we feel and project, remain unspoken and hence unincorporated, unconscious or unperformed. The law requires a sealed respect or tight-lipped hostility, a public avoidance of eros not least because, ironically, there is no language, no proper form within which to express this love of the brother or fear of flatterers, followers, and other political enemies.

Blanchot dedicates *Pour l'amitié* to “all my friends, known and unknown, near and far.” The vagueness of this inscription, its benign charity, suggests both a genre of friendship as afterthought and a secrecy that prevents any disclosure or definition of amity as a lived relationship rather than mere generic recollection. More than anything else, Blanchot inscribes Scipio’s complaint: friendship cannot have a present tense, it is a love that dare not speak its name.⁹¹ Returning to Derrida, a philosopher who still writes his letters by hand, a man whose work is full of references to friendship, this same paradoxical prohibition inhabits what he writes of friends.

According to the law of amity, friendship is best safeguarded by secrecy and by silence. Silence preserves intimacy, guards similarity, and precludes discord or dissolution. All of the classical authors agreed that the love of friends was best kept a secret, intimacy was best restricted and words kept to a minimum. Nietzsche offered an aphoristic formulation: “*Silentium*. One should not talk about one’s friends: otherwise one will talk away the feeling of friendship.”⁹² Among the many possible interpretations of that injunction, Derrida accedes to the traditional notion that friendship is ultimately solitude. It is characterized as an *amour lointain* in which we attend to the letters written by dead intellectual friends or in which we await our own death. In that postponement we

90. For analysis of Blanchot along these lines, see PANU MINKKINEN, THINKING WITHOUT DESIRE: A FIRST PHILOSOPHY OF LAW 178-79 (1999).

91. See CICERO, *supra* note 41, at xvii.62 (“Scipio used to complain that men took less care in relation to friendship than all other things: everybody knew how many goats and sheep he had, but was unable to tell the number of his friends.”).

92. 2 FRIEDRICH NIETZSCHE, HUMAN ALL TOO HUMAN ¶ 252 (1910).

write in abstractions or only indirectly of friendship until our friends die or, presumably, until the future when the “not yet” arrives and friendship is spoken over our grave. The paradox of the “not yet,” to borrow from Althusser again, is that the future lasts a long time. Alternatively, “the revolution” did not take place – at least not the revolution we were after – and so we wait, paralyzed and silent, victims to our colleagues, vacant to our friends.

Silence mimics death. Solitude is the office of the eternal. The unsaid is more properly the mode of melancholia than of mourning: it refuses to let go of an unthought and unspoken love, a love that we never had, a phantom that will continue to haunt us. In Derrida’s formulation, it is, endearingly, vulnerability that precludes the speaking of the love of the friend. Friendship, at the very outset of *Politics*, is defined as an unassuaged risk. In the most solitary and possibly sad depiction of amity, we learn: “Well, it is to love *before* being loved. Before even thinking about what *loving, love, lovence* mean.” And slightly further on we are told, again, that the risk of love is that we cannot know whether it will be reciprocated, an axiom that allows the hypothesis of silence and solitude: “Friendship, what is proper or essential to friendship can be thought or lived without the least reference to the be-loved.”⁹³

There are other possibilities, other risks that we can take. Nietzsche also spoke of friendship as a mode of knowing, as an erudition, *in eroticis*, a love by means of which we listened again and again until we came to know the beloved music or friend.⁹⁴ Derrida is right, however, in believing that Nietzsche also flirted with a certain idealization or mysticism in relation to friendship. What for Derrida gains prosaic expression in the notion of the unsaid, or is described in terms of the affects of foreclosure – intimidation, terror – is more gaily offered up by Friedrich as the stellar quality of the true friend. This is the friend that Nietzsche, in a comparably occult manner, depicts as a ship that passes in the night. On this theory, we have to become separate to realize the wealth of our relationship. We can only love what we don’t have. In either event, the friend is the highest ideal, a god, but a god within a tradition that forbids that we ever see the face of the divinity.

TERMINATIONS

The long-term history of friendship evidences the surprising, the obvious yet overlooked fact that we are the inheritors of a juristic tradition of amity. When Derrida, for example, insists on not naming living friends, when he refuses to criticize the tradition of the brothers, when he glosses over the inside history of friendship or remains silent in the face of

93. DERRIDA, POLITICS OF FRIENDSHIP, *supra* note 1, at 8-10.

94. FRIEDRICH NIETZSCHE, THE JOYFUL WISDOM 334 (1911).

Althusser's authority, it is not without significance. It is hardly a coincidence that in practice he repeats the norms of the enduring laws of amity. It remains to be asked what this means. Why has it been lawyers who have most consistently written the treatises on friendship, and who have legislated the rules and doctrines of amity? What does this mean for our practices of friendship and the intimate politics of professional life? More than that, what is to be made of the irony that when it comes to friendship, the radical tradition has been content to circulate an immense rumor, a code of silence, and a practice of whispers that at its best only rises to the inarticulate or symptomatic level of ambivalence? Finally, is critical inquiry always fated to run out at the boundary of intimacy or on the borders of amity?

The answer to the first question is prosaic and political. The lawyer was defined classically as *amicus* and his function was both to defend his friends or fellow citizens (*amici*) and to promulgate the rules of institutional relationship.⁹⁵ The primary rule was that friendship for God and sovereign took precedence over and precluded any individual friendship in the public sphere or space of the professions. The friend was, in classical terms, *necessarius*, meaning that he was an aspect of fate, a law of time and place, rather than of choice or singularity. Necessity, the historic war against geography, conflict and other tribes, dictated the imposition of norms of amity as citizenship and plurality and prescribed the virtue of friendship in a principle of agreement, or constitutional bond of the many under one God and one law.

The immense rumor initially reflects that antique law and perpetuates a juristic norm that came to institute the singular friend in the form of absence. As Schmitt elaborates, there are friends and enemies, dictated by politics and war, and there is nothing in between, no singularity, no necessary interiority other than the projection of fraternity onto a politically defined exterior. The singular friend, the other self, is literally the body juristically defined as "the chain of neighborly amitie."⁹⁶ The law taught love of power and imposed the various subjections of good citizenship and its plural forms of endeavor. Law offered prohibition – it did not affirm amity. There was no language for living friends, no theory of the face-to-face of amity in professional spaces that postdated the laws of scarcity and deprivation that precluded the subject as a singular or interiorized friend.

Renaissance lawyers, the humanists, converted the classical prohibition of the friend into an increasingly ambivalent norm. To adopt a Lacanian idiom, it was lawyers who wrote about friendship because it is what they most lacked and hence what they most desired. The law of friendship

95. For the sources, see J.A. CROOK, *LEGAL ADVOCACY IN THE ROMAN WORLD* 120-31 (1995).

96. HENRIE WOTTON, *A COURTLIE CONTROVERSIE OF CUPIDS CAUTELS* 2 (1578).

dictates absence, the rule that there cannot be any singular friend, only the institution of an indefinitely deferred and romanticized ideal of a friendship either past, elsewhere, or to come. The juristic form of this institution of amity, as I have traced it here, was that of an idealized concord or compact at the level of the social and a contract or permanent agreement at the level of the subject. The contract *inter duos* replicated the constitutional compact between citizen and sovereign and inscribed loyalty, distance, and silence as the virtues or law of amity. Where felicity, eros or mutual love find expression in the doctrine of friendship, it is either as a theological principle, as an escape from the body and the world, or as *aposiopesis* – as the figure that marks the breaking off of discourse, its moment of passage to the unsaid or to an image that paradoxically contradicts the letter of the law.

The immense rumor is that there is no friend, and that rumor remains true as a description of the unfolding of life in the public sphere. Express or nominate friendship remains a scandal, an intimation of affairs, of cronyism and nepotism. The immense rumor is the contract that underpins the institutional hierarchy. It is the law, and it is the function of law to prevent the incursion of eros and amity into institutional judgments or professional spaces of decision. Put politically, the eros of amity – of face, name, and body – obliterates differences of status and the hierarchy that the institution is built around and serves to protect. Not only must the plurality of friends, citizens, or colleagues take precedence over the body of and desire for a specific friend, but the charge or affect of amity will always threaten to siphon love from its proper object – God, sovereign, reason, law, or *universitas* – or an ephemeral and mutable being, a subject who questions her subjection.

The compact of amicable good citizenship that holds tenure in professional spaces dictates a monotheistic virtue: there is only one law and there is only one true – though infinitely deferred – friend. Reverting to the example with which I began, Althusser was not to be criticized because, institutionally, he was doyen of a school, and citizenship in the mode of amity dictated expressions of loyalty rather than hostility. It was the affect or charge attached to criticism – the feelings of love or of fear, the sense of favoritism or of hostility – which could not enter the public domain. The authority of the norm here precluded the philosophical subject from being critical, as also from writing directly or in any way addressing the interiority of the norm. Most ironic of all, the dictate of silence was justified by the desire to protect the radical position and to preserve the status of the standard-bearer of critique.

The doctrine of friendship legislates an abstract and so perfect love, an amity for the deity, for the nation, for one's institution or profession, which has precedence over and indeed jealously precludes any other actual friend – or expression of friendship – in the spaces of the public sphere. It is a norm that leads to the denial of eros and the disappearance of amity in

the various modes of inarticulacy that make up the unthought and the unsaid. Legally speaking, there is no friend, there is only an absent friend, and it is this lack that marks the institutional reality of friendship as an impossible love or an absurd desire.

There is a cost. That friendship is unthought places it at the level of object choice and so makes it in practice a mode of repetition of familial patterns. Derrida's syntactically tortured confession that he loves his brothers and his family and families should be taken quite literally: here he expresses an ambivalence or frustration with the law but fails to render that inquietude conscious or eloquent.

That friendship is unsaid – that its internal history, good and bad, is exterior to professional space – to some extent explains these strange pathways through theology and law, through iconology and philology, that this investigation has followed. The unsaid is the opposite of a critical idiom: it is at best the language of symptoms, the argot of slips, lapses, jokes, and the various other modes of flirtation or encryption of what we feel in the corridors of the institution and in our various professional roles. When it comes to critical analysis of the intimate public space of amity, the private archive of our experiences of the “animations” of institutional practice and judgment, we have only the privatized language of therapy and the casual and often pre-critical idiom of the off hours.

There was a Marxist maxim in the sixties that ran something like: “No time for friends now; there will be time enough for friends after the revolution.” It can serve as a reminder of the fact that Marx also studied law and that critical lawyers are as much a party to the denial of a public language of amity as are their more conservative colleagues. Take the example of a famous dialogue on the critical legal studies movement in its radical heyday, published in a leading law review. The discussion is between two founding members of the movement, Peter Gabel and Duncan Kennedy. Discussing relatedness, affirmation, and trust as motivations for radical lawyering, Peter Gabel goes on to say, in a moment of rare immediacy, that a good example of this critical tendency to relatedness is “our friendship.” To this public declaration of amity, Duncan immediately replies: “I’m feeling very anxious. I have no idea why. I feel nervous that we’re in a box.”⁹⁷ And that is all that they say about friendship: it generates panic, it triggers inarticulacy, it abrogates words and it makes Duncan think, not inappropriately, granted the history of proximity between friendship and death, of a box or coffin.

The revolution has faded from view, or maybe has been displaced by more capitalistic turns of the wheel, but the ascetic ideal of an endlessly postponed, purely spiritual amity seems to live on. Whatever the cause, the maxim and the momentary dialogue mark a stark similarity between

97. Peter Gabel & Duncan Kennedy, *Roll Over Beethoven*, 36 STANFORD LAW REV. 21 (1984).

conservatives and critics, reactionaries and radicals, between Fulbeck and Derrida, or Kennedy and Dorke – namely that both obey a law that forbids having a friend now and, eloquently, in the public sphere. Whether the motive for the prohibition is purification and salvation, or the urgency of revolution, its effect is to inscribe a similar law and a comparable practice of denial or renunciation. To this it can only be added that law invites transgression.

None of us in truth does without friendship in the public sphere. Borrowing from Berlant, the eros of the intimate public sphere is the very stuff of postmodern institutional life. The affairs and animosities of professional existence – the escape attempts and the omnipresence of the workaholic – alike suggest the profusion of utopian fantasies and reveries that populate the everyday interactions of the institution. The problem I have addressed by means of reworking the immense rumor relates to the marginal character of these expressions of amity – their ineloquence, their stiffness, and their dysfunction. The law offers norms or frames, and these facilitate or prohibit – but generally do not dictate – the incidents of practice or the affects that accompany it. Practice escapes law just as amity transgresses the dictates of its prohibition. It may help to recollect that the etymological root of rumor is the Latin *raucus*, meaning uproar or howl.

The immense rumor, as I have interpreted it, is precisely a symptom, a mark of something traumatic, either a cry for help or a significant lapse in observance of the law. One final example of ambivalence in relation to the law that the rumor circulates, again drawn from Derrida, can provide a clue to a possible conclusion. It comes in the form of the figure of *prosographia*, or writing of the face.⁹⁸ In this age of remorseless mechanical reproduction, despite the ease of e-mail and of all the other facilities of word processing, Derrida still wrote his letters by hand.

The handwritten letter, on institutional stationary, signals a certain transgression, a freedom of communication as well as the paradox of a professional intimacy. First off, the handwritten letter both literally and legally escapes the institution. It does not belong to any mainframe or machine, it is not the property of the university or the law firm, it cannot be cited in litigation or form a cause of action for defamation, nor, when shredded, does it lead to charges of fraud. It is always potentially friendly, and it is unique in that it speaks across the institution and in an inevitably personal mode. Sure, e-mail allows for flirtation and transgression, and business types around the world ran to open the love bug, an e-message headed “I love you” and host to a crippling virus. But the handwritten letter is more than flirtation or flight from the boundaries of bureaucratic

98. GEORGE PUTTENHAM, ARTE ENGLISH POESIE 245 (Murray, 1869) (1589). Puttenham thus defines *prosographia* as “the visage, speech and countenance of any person absent or dead.”

routines; it has to be thought.⁹⁹ The handwritten letter is an act of attention to intimacy and an expression of something more than *caritas* or friendship for the world. It is formally eloquent and, properly speaking, delectable.

In the tradition of the immense rumor, the handwritten or familiar letter was the continuation of conversation with “an absent friend,”¹⁰⁰ and as speech by other means it shared the openness and intimacy of the face-to-face. Far from being external to the public sphere, the amicable letter was part of the genre of letters or epistolary rhetoric. It was integral to the business or “commercements” of the world, while also being defined as an expression of imagination and fantasy – of what we now call affect and attachment.¹⁰¹ The handwritten letter marks a rhetorical paradox. It expresses wonder at and offers a formal recognition of the intimacy of professional spaces. More than anything else, the contemporary figure of the handwritten letter, and of Derrida’s postcards, is a sign of admission of an unspoken complexity. The bulk of friendships are medial; they arise out of the medium of work; they are affects that originate in the public sphere and are lived out within professional spaces.

In the simple intimacy of his epistolary practice, Derrida seemed to challenge the silence that has been imposed historically upon expressions of amity in the professional sphere.¹⁰² His epistolary practice offers a marginal glimpse of a frustrated radicalism. He desired more but settled for less. He was caught within the trajectory of the homo-social history of friendship that this essay has outlined. He repeated the law in the very act of trying to escape it. He passed on the rumor while evidencing the desire to ditch it. He was publicly bound by the very law that he was secretly flouting in his correspondence.

The public discourse of friendship, the law that the treatises review and relay, prohibits the defection or apostasy that comes with speaking to or criticizing the living friend. Historically the risks were too great. Thus, when it comes to talking of the role or practice of friendship in public spaces, analysis runs out and words fail. It is then, in refusing to accept

99. See ELENA LOIZIDOU, *THE LOVE BUG AND THE MELANCHOLIC DRUG QUEEN* 2-3, (2002) (unpublished manuscript, on file with the author).

100. DE LA SERRE, *LE SECRETAIRE à LA MODE* 6 (1632) (“everything that one can say orally to a present friend, can be written to him when absent”); see also ANGEL DAY, *THE ENGLISH SECRETORIE OR METHODE OF WRITING OF EPISTLES AND LETTERS* 1 (1586).

101. NICHOLAS BRETON, *CONCEYTED LETTERS NEWLY LAIDE OPEN* fol. A3r (1618). Breton was also author of *A POSTE WITH A PACKET OF MAD LETTERS* (1605), which by its very title suggests some of the charge of the genre of letters both amicable and amatory.

102. Though, finally, one further intimacy sorrowfully relayed. Now ill, Derrida’s last missive, arriving just as I sat down to revise this article, came typed. Only the signature was by hand. An envoi, but surely also a metaphor, with the import that illness or the prefiguration of death already takes friendship away. We mourn death because the friend dies. As Brecht would have put it, in a materialist and unsentimental mode, death terminates friendship, and after death the friend is no more: all the coyness, the resistance, the wealth of unexpressed feeling, the silence, the secrets must now remain inside forever.

this separation, distance, or postponement that Derrida reaches for his pen and writes by hand those words – those formal affects – that cannot make it into print. He signifies that he is not happy with where he is, that he does not accept the convolutions of style, the avoidance or silence that the politics of friendship imposed upon him. His rebellion is a partial gesture, an intimacy shared on the boundary of the public sphere, a political gesture in the form of a flourish of the pen.

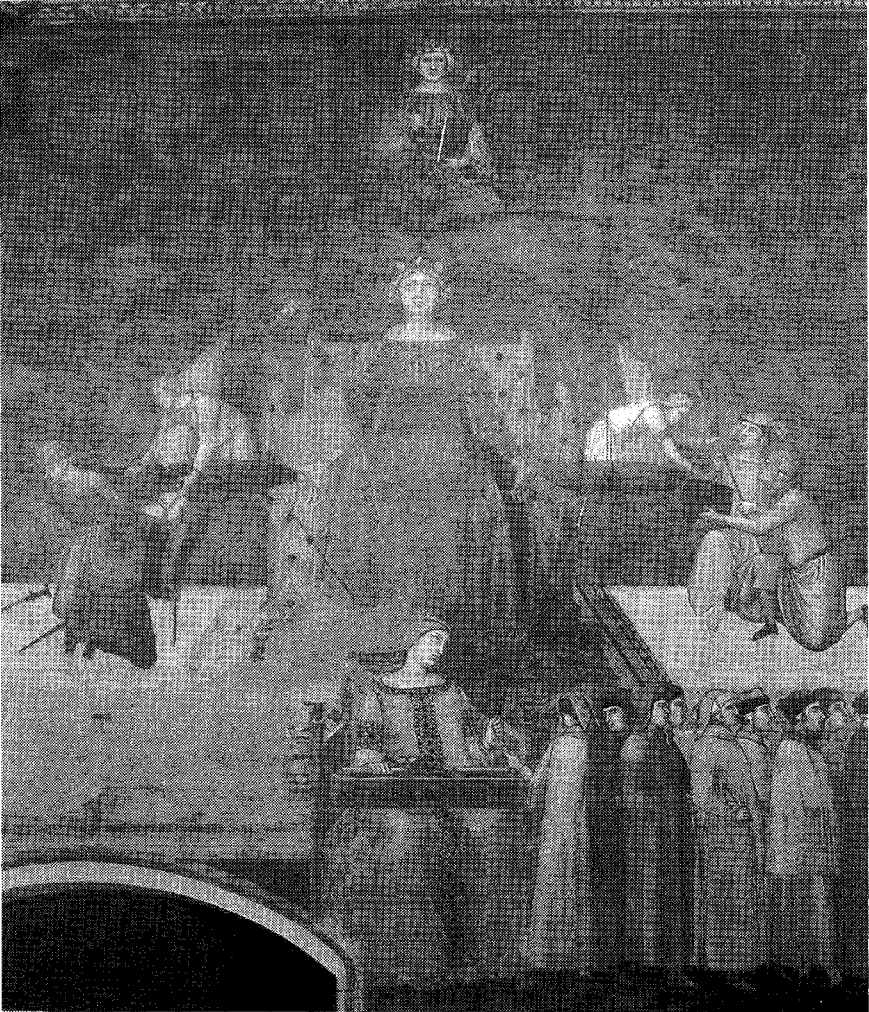


Figure 1

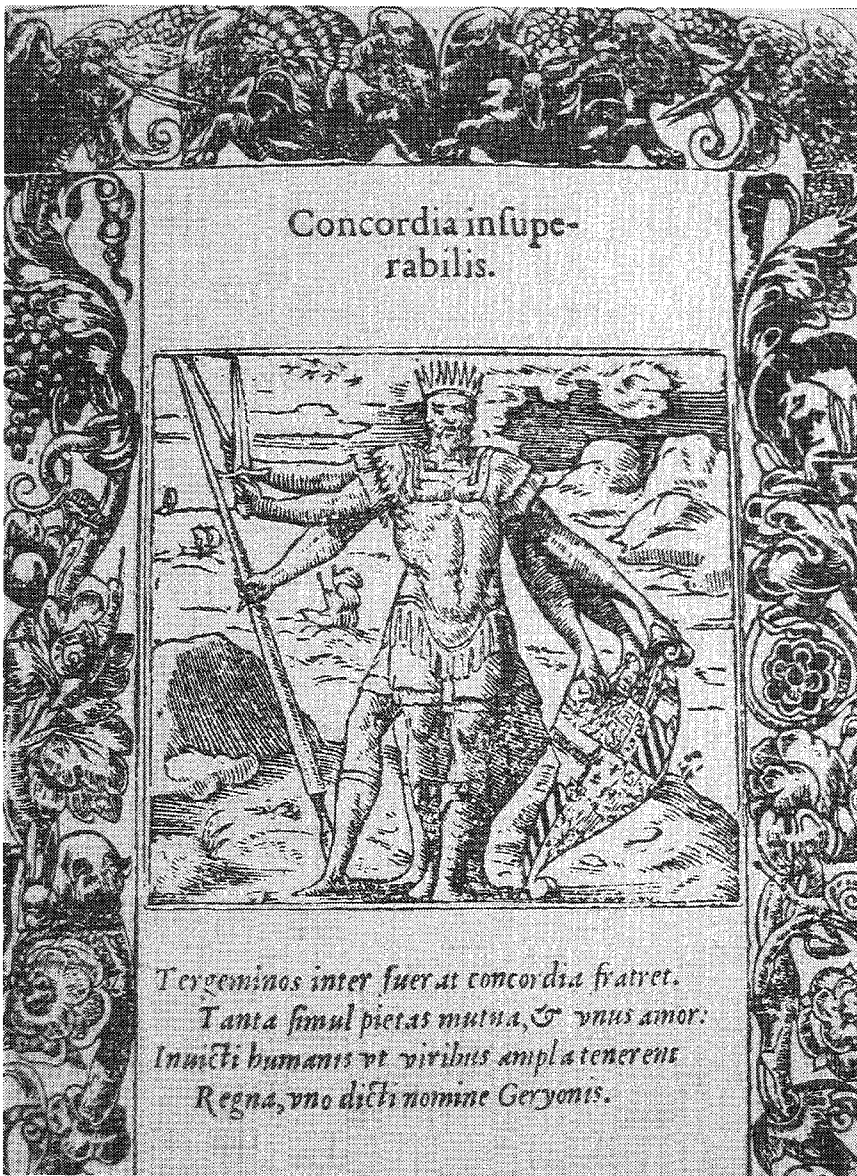


Figure 2



Figure 3

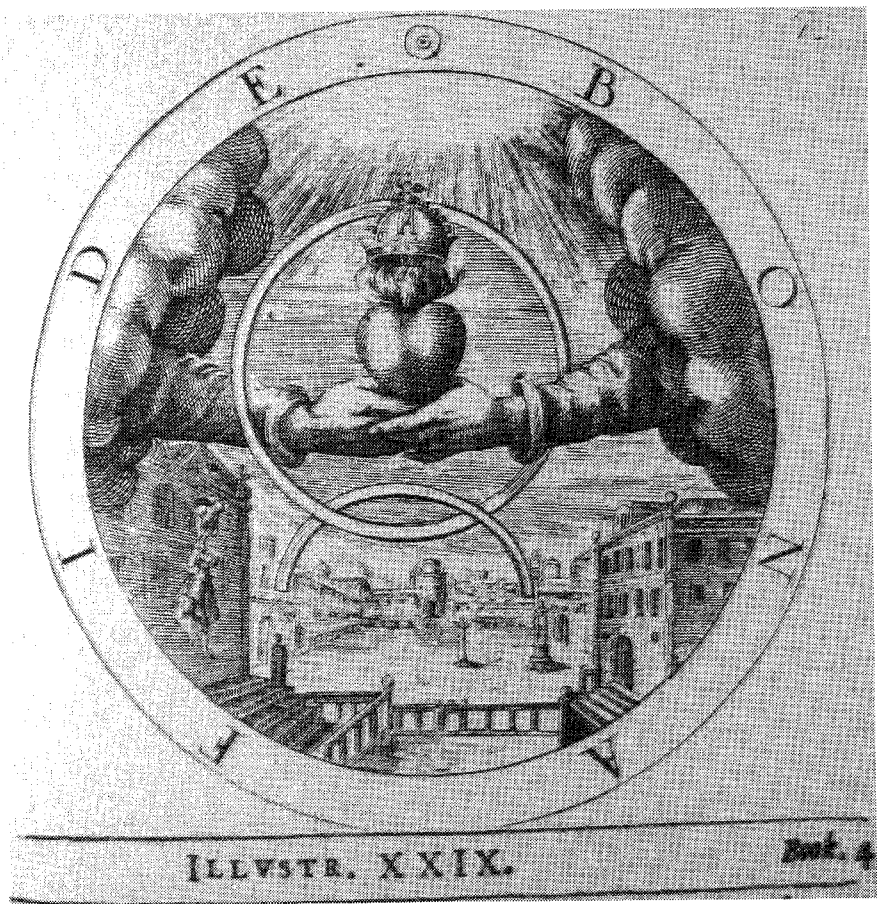


Figure 4

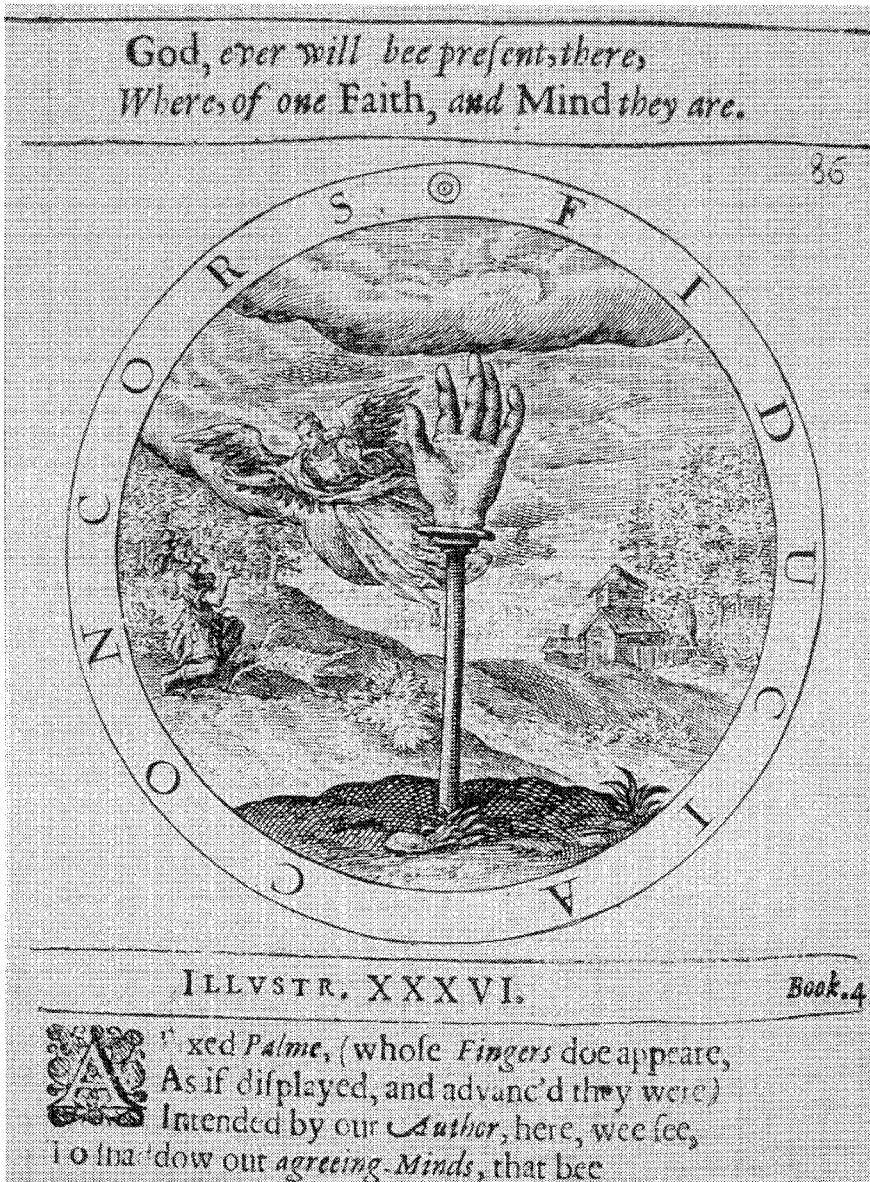


Figure 5



Figure 6



Figure 7



Figure 8



Figure 9